

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
L. Casey Manning, Circuit Court Judge

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S.C. Supreme Court

BRANDON JONES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000605

APPENDIX

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INDEX

INDEXi

GUILTY PLEA HEARING TRANSCRIPT (JUNE 27, 2005) 1

APPLICATION FOR POST-CONVICTION RELIEF23

RETURN29

POST-CONVICTION RELIEF HEARING TRANSCRIPT (FEBRUARY 28, 2011)34

ORDER OF DISMISSAL 100

NOTICE OF MOTION AND MOTION TO ALTER OR AMEND JUDGMENT 111

RETURN TO RULE 59(e), SCRC, MOTION TO ALTER OR AMEND 113

LETTER TO HONORABLE L. CASEY MANNING (JANUARY 25, 2013) 116

JUDGMENT IN A CIVIL CASE 118

ORDER DENYING RULE 59(e), SCRC, MOTION TO ALTER OR AMEND..... 119

CLERK OF COURT RECORDS 121

STATE OF SOUTH CAROLINA)	
)	COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND)	04-GS-40-8462
)	04-GS-40-8463
)	04-GS-40-8464
THE STATE,)	
)	GUILTY PLEA ONLY
VS.)	TRANSCRIPT OF RECORD
)	
BRANDON JONES,)	
)	
DEFENDANT,)	

JUNE 27TH, 2005
COLUMBIA, SOUTH CAROLINA

BEFORE:

THE HONORABLE JOHN L. BREEDEN, JUDGE.

APPEARANCES:

ERIN GADDY, ASSISTANT SOLICITOR
ATTORNEY FOR THE DEFENDANT

DEBORAH AHRENS, ESQ.
ATTORNEY FOR THE DEFENDANT

KAREN TRACY
OFFICIAL COURT REPORTER

C O N T E N T S

INDEX OF EXHIBITS:

(THERE WERE NO EXHIBITS INTRODUCED.)

INDEX OF WITNESSES:

(THERE WERE NO WITNESSES CALLED.)

1 BRANDON JONES, AFTER BEING DULY SWORN,
2 TESTIFIED AS FOLLOWS:

3 THE COURT: YOU'RE BRANDON JONES?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: YES, MA'AM.

6 MS. GADDY: YOUR HONOR, MAY IT PLEASE THE COURT.

7 BRANDON JONES STANDS BEFORE YOU REPRESENTED BY HIS
8 ATTORNEY, DEBORAH AHRENS, OF THE PUBLIC DEFENDER'S OFFICE;
9 ERIN GADDY FOR THE STATE.

10 EACH OF THE VICTIMS' FAMILIES ARE WITH ME, AND I'LL
11 INTRODUCE THEM AT THE APPROPRIATE TIME. THE DEFENDANT IS
12 PLEADING GUILTY TO THREE COUNTS OF CRIMINAL SEXUAL CONDUCT
13 WITH A MINOR IN THE FIRST DEGREE, AND THERE ARE NO
14 NEGOTIATIONS OR RECOMMENDATIONS.

15 I WILL STATE FOR THE COURT THAT THE DEFENSE HAS
16 INDICATED TO ME THAT THEY ARE GOING TO REQUEST A
17 PRE-SENTENCE INVESTIGATION, SO I WILL NEED GUIDANCE FROM
18 THE COURT AS TO HOW MUCH OF A FACTUAL BASIS YOU WOULD LIKE
19 ME TO LAY AT THIS TIME.

20 THE COURT: WELL, LET ME QUALIFY HIS PLEA FIRST, AND
21 THEN WE CAN GET AROUND THAT.

22 MS. GADDY: YES, SIR.

23 THE COURT: THIS IS BRANDON JONES?

24 THE DEFENDANT: YES, YOUR HONOR.

25 THE COURT: MR. JONES, YOU ARE REPRESENTED BY MS.

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AHRENS?

THE DEFENDANT: YES, YOUR HONOR.

THE COURT: ARE YOU SATISFIED WITH HER REPRESENTATION?

THE DEFENDANT: EXTREMELY.

THE COURT: DO YOU HAVE ANY COMPLAINTS ABOUT HOW SHE HAS REPRESENTED YOU?

THE DEFENDANT: NONE AT ALL.

THE COURT: HOW OLD ARE YOU, SIR?

THE DEFENDANT: TWENTY-TWO, SIR.

THE COURT: YOU'RE CHARGED IN THESE INDICTMENTS WITH THREE COUNTS OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE FIRST DEGREE, AND I'M TOLD YOU WANT TO PLEAD GUILTY TO THOSE OFFENSES; IS THAT CORRECT?

THE DEFENDANT: YES, YOUR HONOR.

THE COURT: NOW, IS ANYONE MAKING YOU PLEAD GUILTY, MR. JONES?

THE DEFENDANT: NO, YOUR HONOR.

THE COURT: HAS ANYONE THREATENED YOU, INTIMIDATED YOU, OR DONE ANYTHING TO YOU TO MAKE YOU FEEL LIKE YOU HAD TO PLEAD GUILTY OR YOU WERE EXPECTED TO PLEAD GUILTY?

THE DEFENDANT: NO, SIR.

THE COURT: BECAUSE YOU'RE NOT. YOU UNDERSTAND THAT, DO YOU NOT?

THE DEFENDANT: YES, SIR.

1 THE COURT: YOU HAVE A RIGHT TO A TRIAL BY JURY ON
2 THESE MATTERS. DO YOU KNOW WHAT A TRIAL BY JURY IS?

3 MS. GADDY: YES, SIR, YOUR HONOR.

4 THE COURT: THAT'S AN IMPORTANT AND A SUBSTANTIAL
5 RIGHT THAT YOU HAVE. AT ANY TRIAL THAT YOU WOULD HAVE,
6 YOU WOULD HAVE ADDITIONAL RIGHTS. YOU WOULD HAVE, FOR
7 INSTANCE, THE RIGHT TO REMAIN SILENT. THAT MEANS YOU
8 DON'T HAVE TO SAY A WORD AT ANY TRIAL THAT YOU WOULD HAVE,
9 BECAUSE YOU HAVE NOTHING TO PROVE.

10 THE STATE HAS THE BURDEN TO PROVE YOUR GUILT. TO
11 PROVE THAT GUILT TO THE JURY BEYOND A REASONABLE DOUBT,
12 NOW, THAT HAS BEEN DEFINED AS MEANING THAT THEY MUST --
13 THEY, THE STATE, MUST PROVE TO THE JURY TO THEIR
14 SATISFACTION THAT YOU ARE GUILTY BEYOND A REASONABLE
15 DOUBT; THAT THEY BE FIRMLY CONVINCED OF YOUR GUILT BEFORE
16 THEY COULD RETURN A GUILTY VERDICT AGAINST YOU.

17 DURING THAT TRIAL, YOU DON'T HAVE TO SAY A WORD. YOU
18 HAVE THE RIGHT TO REMAIN SILENT, AND THE JURY WILL BE TOLD
19 BY THE JUDGE AND INSTRUCTED THAT THEY CANNOT HOLD YOUR
20 SILENCE AGAINST YOU.

21 WHEN I SAY YOU HAVE THE RIGHT TO REMAIN SILENT, THAT
22 GENERALLY CONSTRUES TO ME THAT YOU DON'T HAVE TO TAKE THE
23 STAND AND EXPLAIN YOURSELF. THE JURY, AS I SAY, WILL BE
24 TOLD THAT THEY CAN'T HOLD YOUR DECISION NOT TO TAKE THE
25 STAND OR YOUR DECISION TO REMAIN SILENT AGAINST YOU.

1 THAT'S YOUR PREROGATIVE. THAT'S YOUR RIGHT.

2 FURTHER, THE JURY WILL BE TOLD THAT WHEN THEY RETIRE
3 TO THEIR JURY ROOM TO DELIBERATE YOUR VERDICT OR
4 DELIBERATE YOUR GUILT OR INNOCENCE, THAT THEY CAN'T EVEN
5 BRING THE FACTS OF YOUR SILENCE UP FOR DISCUSSION.

6 THEY CAN'T SAY WELL, YOU KNOW, MR. JONES DIDN'T TAKE
7 THE STAND. THAT MUST MEAN THAT -- THEY CAN'T EVEN TALK
8 ABOUT IT TO FURTHER ENSURE THAT YOUR SILENCE WON'T BE HELD
9 AGAINST YOU. NOW, THAT'S A RIGHT THAT YOU HAVE, AND
10 THAT'S A SUBSTANTIAL RIGHT.

11 YOU HAVE A RIGHT TO BE FREE FROM SELF-INCRIMINATION.
12 THAT MEANS SHOULD YOU DECIDE AT ANY TRIAL THAT YOU WOULD
13 HAVE, YOU MAY REFUSE TO ANSWER QUESTIONS ON THE GROUND
14 THAT IT MAY TEND TO INCRIMINATE YOU. YOU DON'T HAVE TO
15 TESTIFY AGAINST YOURSELF.

16 YOU HAVE THE RIGHT TO AN ATTORNEY IF YOU CAN'T AFFORD
17 ONE. YOU HAVE THE RIGHT TO CONFRONT THE PEOPLE OR THE
18 PERSONS THAT ARE ACCUSING YOU OF THESE CRIMES. YOU HAVE
19 THE RIGHT TO CROSS-EXAMINE THE WITNESSES THAT THE STATE
20 WOULD PUT ON THE STAND IN AN EFFORT TO CONVICT YOU, TO
21 HAVE YOUR ATTORNEY TEST THEIR CREDIBILITY BY ASKING THEM
22 QUESTIONS ON CROSS-EXAMINATION.

23 YOU HAVE THE RIGHT TO USE THE COURT'S POWER OF
24 SUBPOENA TO SUBPOENA WITNESSES THAT YOU THINK WOULD BE
25 FAVORABLE TO YOU IN THE CASE TO HELP YOU GET YOUR

1 WITNESSES HERE TO COURT.

2 ALL OF THESE RIGHTS THAT I TELL YOU ABOUT IN AND OF
3 THEMSELVES ARE RATHER SUBSTANTIAL RIGHTS, BUT WHEN THEY
4 COME ALONG WITH YOUR RIGHT TO A TRIAL BY YOUR PEERS OR A
5 JURY TRIAL, THAT MAKES THAT RIGHT A VERY IMPORTANT RIGHT
6 THAT YOU HAVE. IT'S A RIGHT THAT YOU GIVE UP WHEN YOU
7 PLEAD GUILTY AS YOU'RE ATTEMPTING TO DO TODAY. YOU CAN'T
8 PLEAD GUILTY AND HAVE A TRIAL. DO YOU UNDERSTAND THESE
9 THINGS I'M TELLING YOU?

10 THE DEFENDANT: YES, YOUR HONOR.

11 THE COURT: UNDERSTANDING THESE THINGS, DO YOU STILL
12 WANT TO GO FORWARD WITH YOUR PLEA?

13 THE DEFENDANT: YES, YOUR HONOR.

14 THE COURT: HOW DO YOU PLEAD TO THESE CHARGES OF
15 CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE FIRST DEGREE,
16 MR. JONES?

17 THE DEFENDANT: GUILTY, YOUR HONOR.

18 THE COURT: ARE YOU GUILTY?

19 THE DEFENDANT: YES.

20 THE COURT: ARE YOU UNDER THE INFLUENCE OF ANY
21 SUBSTANCE THAT WOULD MAKE YOU NOT UNDERSTAND WHAT YOU'RE
22 DOING?

23 THE DEFENDANT: NO, YOUR HONOR.

24 THE COURT: I TAKE IT THEN THAT YOU DO UNDERSTAND
25 WHAT YOU'RE DOING?

1 THE DEFENDANT: I DO.

2 THE COURT: HOPEFULLY YOU'RE DOING WHAT YOU THINK IS
3 IN YOUR BEST INTEREST; IS THAT CORRECT?

4 THE DEFENDANT: YES, YOUR HONOR.

5 THE COURT: VERY WELL. THE COURT WILL ACCEPT
6 MR. JONES' PLEA. I FIND HE PLEADS GUILTY FREELY AND
7 VOLUNTARILY, AND HE DOES SO AFTER THE ADVICE AND COUNSEL
8 OF AN ATTORNEY HE'S SATISFIED WITH, AND HE'S MADE AN
9 INFORMED AND A VOLUNTARY DECISION ON EACH OF THESE COUNTS
10 TO GIVE UP HIS RIGHT TO A JURY TRIAL AND TENDER HIS PLEA
11 OF GUILTY, AND THE COURT WILL ACCEPT HIS PLEA.

12 YES, SIR. I WANT YOU -- YES, MA'AM, RATHER. I WANT
13 YOU TO TELL ME AS MUCH ABOUT THIS FACTUAL SITUATION AS YOU
14 THINK THE COURT NEEDS TO KNOW.

15 MS. GADDY: YES, YOUR HONOR.

16 YOUR HONOR, IN THESE CASES THERE ARE THREE MINOR
17 VICTIMS. EACH OF THE VICTIMS IS NAMED IN ONE INDICTMENT
18 FOR A TIME SPAN FROM SEPTEMBER THROUGH DECEMBER OF 2003.
19 TWO OF THE BOYS WITH THE SAME LAST NAME ARE TWIN YOUNG MEN
20 WHO WERE APPROXIMATELY TEN YEARS OLD AT THE TIME OF THE
21 OFFENSE. THEY HAD THEIR BIRTHDAY IN JUNE.

22 THE OTHER YOUNG MAN IS A FRIEND OF THEIRS, AS WELL.
23 THE THREE YOUNG MEN WERE TYPICALLY TOGETHER AT THE HOUSE,
24 AND HE'S ALSO APPROXIMATELY TEN YEARS OLD AT THE TIME OF
25 THE OFFENSE. HE'S ACTUALLY TEN-AND-A-HALF.

1 THE ALLEGATIONS IN EACH CASE ARE REPEATED INCIDENTS
2 OF FONDLING, OF ORAL SEX, AND OF MASTURBATION, BOTH ON THE
3 CHILDREN AND BY THE CHILDREN ON THE ADULT.

4 THE CHILDREN IN THIS CASE DISCLOSED -- FIRST, THE
5 YOUNG MAN WHO IS A SINGLE CHILD DISCLOSED TO HIS PARENTS,
6 AND HE WAS THE ONE WHO INITIALLY OPENED THE INVESTIGATION.

7 MR. MILLER IS STANDING HERE BESIDE ME. HE IS THE
8 FATHER OF THE CHILD NAMED IN THE INDICTMENT. ONCE THAT
9 WAS BROUGHT TO LIGHT, THEN THE OTHER TWO YOUNG MEN WERE
10 THEN ALSO INTERVIEWED AND IMMEDIATELY DISCLOSED, AS WELL,
11 AT THE ASSESSMENT RESOURCE CENTER, WHICH IS A CHILD
12 ADVOCACY CENTER HERE IN COLUMBIA.

13 ALL THREE YOUNG MEN DID GIVE COMPELLING DISCLOSURES
14 IN THE TERMINOLOGY AT THE ASSESSMENT RESOURCE CENTER. ALL
15 THREE DISCLOSED THAT IN RETURN FOR THESE SEXUAL ACTS THAT
16 THEY WERE PAID SMALL AMOUNTS OF MONEY. AT SOME POINT IT'S
17 \$5, \$6, \$7, THAT KIND OF THING.

18 THE DEFENDANT, DURING THE INVESTIGATION, LEFT FOR
19 ECUADOR. IN ALL CONCORD WITH THE COURT, THIS WAS A
20 SCHEDULED TRIP. HE WAS ON AN EXCHANGE PROGRAM. HIS
21 FATHER --

22 THE COURT: WHAT KIND OF PROGRAM?

23 MS. GADDY: I'M SORRY, YOUR HONOR. I DO HAVE THE
24 NAME HERE.

25 (PAUSE).

1 THE COURT: I JUST DIDN'T HEAR WHAT YOU SAID.

2 MS. GADDY: I'M SORRY. IT WAS AN EXCHANGE PROGRAM.

3 THE COURT: AN EXCHANGE PROGRAM. OKAY. I'M SORRY, I
4 JUST DIDN'T HEAR WHAT YOU SAID.

5 MS. GADDY: YES, YOUR HONOR, I'M SORRY.

6 THE COURT: LIKE A STUDENT EXCHANGE PROGRAM?

7 MS. GADDY: YES, SIR. HE HAD BEEN THERE ONCE BEFORE
8 APPROXIMATELY TWO YEARS BEFORE THIS INCIDENT AND WAS
9 RETURNING THERE ON A SCHEDULED TRIP.

10 WHILE HE WAS AWAY, HIS PARENTS TRIED TO MAKE CONTACT
11 WITH HIM VIA E-MAIL AND IN FACT, WERE SUCCESSFUL IN
12 ALERTING HIM THAT THE POLICE WERE LOOKING FOR HIM; THAT
13 THE POLICE WANTED HIM TO RETURN TO THE STATES, AND
14 ARRANGING FOR HIM TO ACTUALLY BE TURNED IN WHEN HE
15 RETURNED TO THE STATES.

16 THE FIRST OF THOSE ATTEMPTS DID NOT GO SUCCESSFULLY.
17 THE DEFENDANT DID NOT GET ON THE PLANE IN ECUADOR AND DID
18 NOT RETURN TO THE STATES AS SCHEDULED. AT THAT TIME,
19 BECAUSE THE PARENTS WERE COOPERATING WITH LAW ENFORCEMENT,
20 THEY REMOVED HIS FUNDS FROM HIS BANK ACCOUNT, LEFT HIM
21 WITH JUST ENOUGH, BASICALLY, TO GET BACK TO THE STATES.
22 HE STILL DID NOT RETURN.

23 THEY INITIATED EXTRADITION PAPERS THROUGH THE U.S.
24 MARSHAL SERVICE, AND THOSE WERE EVENTUALLY SERVED ON THE
25 DEFENDANT WHEN HE RETURNED TO THE U.S. I BELIEVE THOSE

1 WERE INITIATED IN MIAMI, YOUR HONOR.

2 THE DEFENDANT IN THIS CASE HAS NEVER ACTUALLY BEEN
3 INTERVIEWED BY LAW ENFORCEMENT IN THE IRMO AREA. HOWEVER,
4 HE WAS INTERVIEWED IN CONNECTION WITH ANOTHER CASE IN
5 NORTH CAROLINA WHERE HE GAVE A FULL AND COMPLETE
6 CONFESSION TO THE NORTH CAROLINA CHARGES. THAT'S BEEN MY
7 CONFUSION WITH THIS CASE, YOUR HONOR.

8 HE HAS, AS WELL, SEEMINGLY ACKNOWLEDGED SOME OF HIS
9 CONDUCT WITH HIS PARENTS. BOTH HIS MOTHER AND HIS FATHER
10 HAVE BEEN SUPPORTIVE OF THE DEFENDANT BUT HAVE ALSO BEEN
11 INTERESTED IN HAVING HIM RECEIVE JUSTICE.

12 ON HIS PRIOR TRIP TO ECUADOR, AS I MENTIONED, THERE
13 DOES APPEAR TO HAVE BEEN SOME SORT OF A SEXUAL
14 RELATIONSHIP WITH A YOUNG MAN THAT DID DEVELOP WHILE HE
15 WAS IN ECUADOR, SO WE'RE LOOKING AT THE POSSIBILITY OF THE
16 ECUADORIANS DOING SOMETHING. HOWEVER, I HAVE BEEN
17 INFORMED BY DEFENSE COUNSEL THAT IN ECUADOR THE
18 RELATIONSHIP WOULD HAVE BEEN LEGAL, SO THAT MAY NOT COME
19 TO FRUITION, BUT THERE ARE AT LEAST TWO OTHER
20 JURISDICTIONS WITH THE POSSIBILITY OF CHARGES ON THIS
21 YOUNG MAN, YOUR HONOR.

22 THE STATE HAS FELT QUITE STRONGLY ABOUT THIS CASE,
23 YOUR HONOR, FROM THE VERY BEGINNING. CHIEF BUCK, THE
24 CHIEF OF IRMO WAS THE INVESTIGATOR ON THE CASE AND THEN
25 BECAME THE CHIEF OF POLICE. HE IS NEXT DOOR IN JUDGE

1 LLOYD'S COURTROOM RIGHT NOW PICKING A JURY ON A SHAKEN
2 BABY CASE OR HE WOULD BE PRESENT IN THIS COURTROOM. HE
3 FEELS VERY STRONGLY ABOUT THIS CASE, AS DOES SCOTT
4 FRANKLIN WITH THE IRMO POLICE DEPARTMENT. BOTH OF THEM
5 WANTED TO BE HERE DURING THIS PLEA AND JUST DUE TO COURT
6 SCHEDULING WAS THE ONLY REASON THEY ARE NOT HERE, BUT THEY
7 ARE PRESENT IN THE BUILDING.

8 YOUR HONOR, THIS DOES INVOLVE TWO SEPARATE FAMILIES.
9 THE MILLERS ARE PRESENT, AND THE SPEARS ARE PRESENT BEHIND
10 THEM.

11 THE COURT: I'LL BE GLAD TO HEAR FROM THEM.

12 MS. GADDY: THANK YOU, YOUR HONOR. I THINK
13 MR. MILLER HAS A PREPARED A STATEMENT. HE WOULD LIKE TO
14 ADDRESS THE COURT.

15 THE COURT: MR. MILLER?

16 MR. MILLER: THANK YOU, YOUR HONOR. MY NAME IS ALAN
17 MILLER. I AM THE FATHER OF ONE OF THE VICTIMS AND A GOOD
18 FRIEND OF THE FAMILY OF BOTH THE VICTIMS.

19 SOCIETY DEFINES ITSELF NOT ONLY BY THE LAW, BUT ALSO
20 BY HOW IT ENFORCES THOSE LAWS. OUR LAWS ARE ON THE BOOKS
21 TO PROTECT SOCIETY, AS WELL AS PUNISH THOSE WHO BREAK
22 THEM.

23 THIS MAN HAS CHOSEN TO IGNORE NOT ONLY OUR LAWS BUT
24 THE LAWS OF GOD. HE HAS SEXUALLY ABUSED THE MOST INNOCENT
25 IN OUR SOCIETY AND THOSE FAMILIES, AS WELL. THAT WILL

1 AFFECT THEIR LIVES, AS WELL AS THE LIVES OF THEIR FAMILIES
2 FOREVER.

3 GONE IS THE INNOCENCE OF THREE YOUNG BOYS THAT WE
4 KNOW OF. THERE ARE PROBABLY MORE WE DON'T KNOW OF, BOTH
5 IN THE STATES AND IN ECUADOR.

6 IF MR. JONES IS ALLOWED TO GO FREE, THERE WILL BE
7 MORE VICTIMS, AND IF THE FUTURE TELLS US ANYTHING, IT
8 TELLS US THAT THIS MAN WILL BECOME MORE AND MORE DANGEROUS
9 AS HE TRIES TO LIVE OUT HIS SICK FANTASIES.

10 THE PREDATOR, A PEDOPHILE, CANNOT CHANGE HIS BEHAVIOR
11 ANY MORE THAN A LEOPARD CAN CHANGE HIS SPOTS. THAT'S WHO
12 HE IS. NO AMOUNT OF THERAPY CAN CHANGE HIM AND KEEP HIM
13 FROM VICTIMIZING OTHER INNOCENT BOYS IF HE IS ALLOWED TO
14 GO FREE.

15 WHAT HE HAS DONE HAS CAUSED CONTINUOUS PAIN AND FEAR
16 FOR HIS VICTIMS AND TO THE PARENTS. ALL OF THIS HAS
17 AFFECTED MY SON, AND IT HAS PLACED FEAR IN HIS HEART. HE
18 HAS TAKEN AWAY THE TRUST OF ADULTS. HE HAS HAD DIFFICULTY
19 SLEEPING. HE HAS HAD NIGHTMARES, AND HE IS AFRAID OF
20 MR. JONES AND OF MR. JONES' FATHER.

21 THIS HAS AFFECTED MY WIFE. IT'S BROKEN HER HEART, AS
22 WELL AS MINE. IT HAS AFFECTED MY MARRIAGE. I HAVE
23 COMPASSION FOR THIS YOUNG MAN WHO HAS THROWN AWAY HIS LIFE
24 LIKE THIS, BUT I HAVE NO COMPASSION FOR A PART OF HIM THAT
25 WOULD MANIPULATE OTHERS IN ORDER TO SEXUALLY ABUSE THE

1 INNOCENT FOR HIS OWN SICK FANTASIES.

2 I BEG THE COURT TO PUT THIS PREDATORY PEDOPHILE AWAY
3 FOR AS LONG AS POSSIBLE SO HE WILL NOT BE ABLE TO MOLEST
4 ANYONE ELSE -- OR AT LEAST WHILE HE'S LOCKED UP.

5 THANK YOU.

6 THE COURT: WOULD ANYONE ELSE LIKE TO SPEAK?

7 (THERE WAS NO RESPONSE).

8 MS. GADDY: YOUR HONOR, THIS WILL BE SUFFICIENT.

9 THANK YOU.

10 THE COURT: YES, MA'AM.

11 MS. AHRENS: THANK YOU, YOUR HONOR.

12 MR. JONES, WHO STANDS BEFORE YOU, IS 22 YEARS OLD.

13 AT THE TIME OF THESE INCIDENTS, HE WAS 20. HE WAS
14 ORIGINALLY A CLEMSON UNIVERSITY STUDENT. HE WAS ATTENDING
15 MIDLANDS TECH FOR A LITTLE WHILE, HE WAS AT THE TIME THIS
16 ALL OCCURRED.

17 HIS FATHER IS HERE TODAY IN THE COURTROOM. MR. JONES
18 WAS REPRESENTED FORMERLY BY NED LONGSHORE FROM OUR OFFICE.
19 I REPRESENTED MR. JONES SINCE FEBRUARY OF THIS YEAR, SPENT
20 QUITE A BIT OF TIME WITH HIM, EXPLAINED TO HIM THAT THE
21 STATE WAS NOT MAKING AN OFFER.

22 IF HE PLEADED GUILTY, IT WOULD BE STRAIGHT UP TO
23 CHARGES THAT CARRY UP TO 30 YEARS. THEY ARE MOST SERIOUS
24 OFFENSES. THEY ARE VIOLENT OFFENSES, AND MR. JONES
25 BASICALLY WOULD NEVER ENTERTAIN THE NOTION OF TAKING THIS

1 CASE TO TRIAL, YOUR HONOR. HE HAS ALWAYS TAKEN
2 RESPONSIBILITY FOR WHAT HE DID. HE HAS ALWAYS
3 ACKNOWLEDGED THE WRONGFULNESS OF HIS ACTIONS.

4 PRIOR TO ANY OF THIS TAKING PLACE, MR. JONES WAS
5 TRYING TO SEEK TREATMENT. HE CONTINUES AND HAS CONTINUED
6 THROUGHOUT MY REPRESENTATION OF HIM TO WISH TO SEEK
7 TREATMENT, EVEN UNDERSTANDING IT WAS NOT GOING TO AFFECT
8 HIS SENTENCE.

9 I HAVE SHARED WITH THE STATE, AND IF I MAY APPROACH,
10 YOUR HONOR --

11 THE COURT: YOU MAY.

12 MS. AHRENS: -- I'D LIKE TO HAND UP TO THE COURT A
13 FEW LETTERS FROM FRIENDS OF MR. JONES AND HIS FAMILY, AS
14 WELL AS THE PROGRAM THAT MR. JONES HAS SOUGHT TO TRY TO
15 ENTER IN ORDER TO ADDRESS HIS PROBLEM.

16 I'VE SPOKEN TO MR. JONES ABOUT THIS EXTENSIVELY, AND
17 HE UNDERSTANDS THAT THE COURT IS NOT GOING TO GIVE HIM A
18 SENTENCE THAT WOULD HAVE AS A COMPONENT GOING TO THAT
19 PROGRAM OR ANYTHING TO THAT EFFECT, YOUR HONOR.

20 I THOUGHT IT WAS IMPORTANT TO PUT ON THE RECORD HIS
21 ONGOING AND CONTINUING ATTEMPTS TO TRY TO GET HELP FOR HIS
22 SITUATION. HE IS A YOUNG MAN WHO DOES NOT HAVE A PRIOR
23 CRIMINAL HISTORY.

24 I THINK THAT IF HE DOES RECEIVE TREATMENT AT SOME
25 POINT, HE IS GOING TO BE ABLE TO HAVE A VERY PRODUCTIVE

1 LIFE. HE'S A VERY SMART YOUNG. HE'S A VERY CAPABLE YOUNG
2 MAN, AND THE DEMEANOR YOU SEE IN COURT TODAY IS THE
3 DEMEANOR HE HAS ALWAYS EXHIBITED.

4 AT THE APPROPRIATE TIME, HE DOES WISH TO ADDRESS THE
5 COURT, AND I DON'T KNOW IF YOU WOULD LIKE TO GO AHEAD AND
6 HEAR FROM HIM AT THIS POINT, YOUR HONOR.

7 THE COURT: I'LL BE GLAD TO.

8 MS. AHRENS: PARDON?

9 THE COURT: I'LL BE GLAD TO.

10 MS. AHRENS: THANK YOU, YOUR HONOR.

11 THE DEFENDANT: YOUR HONOR, I DON'T EVEN KNOW WHERE
12 TO START. THERE'S SO MANY THINGS THAT I FEEL LIKE I NEED
13 TO SAY, AND THEY ARE ALL SO IMPORTANT.

14 I GUESS I WANT TO START WITH YOU GUYS. I KNOW
15 THERE'S NOTHING I CAN SAY TO MAKE YOU UNDERSTAND. I KNOW
16 THERE IS NOTHING I CAN SAY TO TAKE BACK WHAT I DID. I
17 KNOW THAT AN APOLOGY IS LIKE A BANDAID OVER A GUNSHOT
18 WOUND. I KNOW IT'S INSULTING TO THE SITUATION, BUT I AM
19 SORRY.

20 I WANT YOU TO KNOW THAT IT WAS NEVER MY INTENTION TO
21 HURT YOU OR TO BETRAY YOU AND CERTAINLY NOT YOUR CHILDREN.
22 I FEEL LIKE I'M ALMOST ASKING FOR THE IMPOSSIBLE, BUT I
23 PRAY THAT SOMEDAY YOU'RE GOING TO BE ABLE TO FORGIVE ME.
24 I KNOW IT PROBABLY WON'T BE RIGHT AWAY. THAT'S OKAY. I
25 UNDERSTAND THAT YOU'RE ANGRY AT ME. I WOULD BE, TOO.

1 MAYBE THE ONLY WAY I CAN GIVE YOU SOME SORT OF
2 CLOSURE IS TO LET YOU KNOW WHAT HAPPENED. THIS HAS BEEN
3 GOING ON SINCE I WAS PROBABLY TEN YEARS OLD. WHEN I WAS
4 TEN, MY MOM TOOK ME OUT OF PUBLIC SCHOOL, AND I STARTED
5 HOME SCHOOLING. SINCE THAT TIME, I DON'T EVER RECALL A
6 SINGLE FRIEND THAT I KEPT THROUGHOUT THAT TIME, A SINGLE
7 PERSON THAT I COULD TELL ANYTHING TO OR WHO WOULD ACCEPT
8 ME FOR WHO I WAS.

9 FOR SOME REASON, I DON'T KNOW WHY, THIS IS JUST MY
10 SPECULATION: IT FROZE MY EMOTIONAL DEVELOPMENT.
11 EMOTIONALLY, I'M ABOUT TEN YEARS OLD. I PREFER VIDEO
12 GAMES TO GOING TO THE MALL. I PREFER NINTENDO TO GIRLS.
13 I WOULD RATHER BUILD FORTS IN THE WOODS THAN GO RACE CAR
14 DRIVING OR WHATEVER.

15 THE FRIENDS THAT I SEEK ARE ALSO ABOUT THAT AGE. NOW
16 BEING TEN YEARS OLD EMOTIONALLY, I DON'T KNOW WHERE THE
17 HORMONES CAME IN, BUT THEY DID. THEY DON'T GO ON IN A TEN
18 YEAR OLD EQUATION BECAUSE THEY'RE NOT SUPPOSED TO BE THERE
19 WHEN YOU'RE TEN YEARS OLD.

20 FOR SOME REASON, THE COMBINATION OF THIS AGE IDENTITY
21 DISORDER AND THE HORMONES, THEY SEEMED TO PRODUCE
22 PEDOPHILIA. IT'S SOMETHING THAT UNLESS YOU HAD IT, YOU
23 CAN'T EVEN BEGIN TO UNDERSTAND WHAT A HORRENDOUS TERRIBLE
24 PAIN IT CAUSES THE PERSON THAT HAS IT BECAUSE IT CAUSES
25 YOU TO CONSTANTLY SEEK AND WANT SOMETHING THAT YOU KNOW

1 YOU CANNOT HAVE.

2 IF I COULD HAVE CHOSEN TO HAVE BEEN BORN WITH
3 ANYTHING ELSE, I WOULD HAVE. I WOULD HAVE RATHER BEEN
4 BORN WITH MULTIPLE SCLEROSIS OR AIDS, OR I WOULD HAVE
5 RATHER NOT BEEN BORN.

6 IF THERE WERE A PILL I COULD TAKE THAT WOULD CURE ME
7 BUT KILL ME IN A YEAR, I WOULD HAVE TAKEN IT YEARS AGO. I
8 FOUGHT THIS SINCE I KNEW WHAT IT WAS. FOR YEARS I SCOURED
9 ~~THE INTERNET LOOKING FOR TREATMENT PROGRAMS, FOR HELP, FOR~~
10 INFORMATION ON CHEMICAL CASTRATION, ON SURGICAL CASTRATION
11 EVEN, ANYTHING THAT WOULD HELP ME.

12 UNFORTUNATELY, THERE ARE NOT REALLY ANY RESOURCES ON
13 THE WEB THAT ARE AVAILABLE TO PEOPLE LIKE ME, SO WHEN I
14 WENT AWAY TO CLEMSON, I WENT TO A COUNSELOR THERE. I TOLD
15 HIM EVERYTHING. I SAID, "PLEASE, YOU HAVE GOT TO HELP
16 ME." HE REFERRED ME TO A MEDICAL DOCTOR.

17 AT THAT TIME I HAD BEEN EXTENSIVELY STUDYING CHEMICAL
18 CASTRATION, AND I KNEW A LOT ABOUT THE DIFFERENT DRUGS AND
19 THERAPIES, AND I KNOW THAT IT WAS EXPENSIVE BUT I WAS
20 WILLING TO DO ANYTHING.

21 I BEGGED THAT DOCTOR TO PLEASE GIVE ME A PRESCRIPTION
22 FOR DEPO PROVERA ON MULTIPLE OCCASIONS AND HE WOULD NOT.
23 I SAID, "PLEASE, IF YOU DON'T, SOMEDAY I'M GOING TO END UP
24 IN JAIL." HE STILL WOULDN'T DO IT, SO I FALSIFIED SOME
25 PRESCRIPTIONS. I WAS GOING TO TURN THOSE IN WHEN A COUPLE

1 OF FRIENDS OF MINE FOUND THEM AND FIGURED THAT I WAS GOING
2 TO USE THEM TO GET DEPO PROVERA FOR MAYBE A GIRLFRIEND OR
3 SOMETHING AND MADE ME THROW THEM AWAY AND PROMISE THAT I
4 WOULD NEVER DO ANYTHING LIKE THAT AGAIN.

5 MY DEPRESSION OVER THESE FAILED ATTEMPTS CAUSED ME TO
6 BASICALLY LOSE MY SCHOLARSHIPS, AND I COULD NO LONGER
7 ATTEND CLEMSON SO I WENT TO MIDLANDS TECH. IT WAS THERE
8 THAT I MET THE VICTIMS, BUT IT WASN'T A PREDATORY
9 RELATIONSHIP. AT FIRST IT WAS A FRIENDSHIP.

10 IT WAS -- THERE IS NO WAY TO DESCRIBE WHAT IT FEELS
11 LIKE FOR FINALLY SOMEONE, FINALLY, TO WANT TO COME TO YOUR
12 DOOR AND ASK YOUR DAD IF YOU CAN COME OUT TO PLAY OR SAY
13 "LET'S GO PLAY VIDEO GAMES" OR "LET'S GO BUILD FORTS IN
14 THE WOODS OR SHOOT SOME FIREWORKS." I NEVER HAD FRIENDS
15 LIKE THAT.

16 SOMETHING HAPPENED, AN OPPORTUNITY PRESENTED ITSELF
17 THAT I SIMPLY DIDN'T HAVE THE CONSTITUTION TO RESIST, AND
18 I'M SORRY.

19 THE COURT: ANYTHING FURTHER?

20 THE DEFENDANT: I WOULD JUST LIKE TO SAY ALSO THAT
21 THE LAWS OF THIS STATE DON'T PERMIT IT, BUT I HAVE ASKED
22 REPEATEDLY TO BE CASTRATED POSSIBLY AS AN ALTERNATIVE FOR
23 PUNISHMENT OR EVEN JUST SOMETHING EXTRA AS TO PUNISHMENT.

24 I'VE ASKED ALSO TO BE CHEMICALLY CASTRATED. I'VE
25 BEEN TOLD THAT IS SOMETHING THAT CAN BE DONE, SO THAT'S

1 SOMETHING I HOLD HOPE OUT FOR. EVEN IF I'M NOT ORDERED TO
2 DO IT BY THE COURT, IT'S SOMETHING THAT I WILL GIVE. I
3 WILL STOP AT NOTHING TO DO.

4 BEFORE I DIDN'T HAVE THE SUPPORT OF MY PARENTS
5 BECAUSE I COULDN'T TELL THEM ABOUT THIS. I WAS TOO AFRAID
6 OF REJECTION.

7 IT'S SOMETHING THAT NO MATTER WHAT I INTEND TO SEEK
8 NOW, AND I WILL FIND IT. THIS IS NOT SOMETHING I'M PROUD
9 OF OR ANYTHING LIKE THAT. THIS IS -- I KNOW IT'S WRONG.
10 I COULDN'T HELP IT AND I'M SORRY.

11 THERE'S ONE OTHER THING, JUST ONE. AT THE BOND
12 HEARING, MR. MILLER WAS THERE AND HE SAID SOMETHING ABOUT
13 THAT IF I WAS LET OUT, THEY WOULD BE AFRAID OF ME. I
14 DON'T KNOW WHERE THAT CAME IN OR WHAT, BUT YOUR HONOR, I
15 NEVER THREATENED THEM. THOSE ARE MY BEST FRIENDS, THEY
16 WERE, AND THE THING THAT HURTS ME THE MOST ABOUT THIS
17 WHOLE THING IS THAT I'VE LOST THEM. I'M SORRY.

18 MS. AHRENS: YOUR HONOR, NOTHING FURTHER FROM THE
19 DEFENSE. THE ONLY THING I WOULD ADD IS THAT -- AS THE
20 STATE MENTIONED, WE WOULD REQUEST PRE-SENTENCING
21 INVESTIGATION OF MR. JONES.

22 THE COURT: I AM GOING TO ORDER A PRE-SENTENCE
23 INVESTIGATION. I UNDERSTAND I WILL BE BACK IN THIS
24 JURISDICTION THE FIRST PART OF AUGUST, I BELIEVE.

25 I'LL FIND OUT WHAT EFFECT THE PRE-SENTENCE

1 INVESTIGATION MAY HAVE ON MY SENTENCE, HOW IT WILL IMPACT
2 WHAT MY SENTENCE WILL BE, BUT THE FACTS OF THE CASE I
3 THINK WARRANT A PRE-SENTENCE INVESTIGATION. I'LL
4 ENTERTAIN THAT PRE-SENTENCE INVESTIGATION. YOU WILL BE
5 NOTIFIED, MR. MILLER, AND THE REST OF THE FAMILY MEMBERS,
6 WHEN THE SENTENCING WILL TAKE PLACE IN ADVANCE OF THAT SO
7 YOU WILL HAVE TIME TO MAKE YOUR ARRANGEMENTS AND BE HERE
8 IF YOU WISH TO BE HERE.

9 MS. AHRENS: YES, SIR.

10 THE COURT: I DON'T KNOW IF A PRE-SENTENCE
11 INVESTIGATION WILL INVOLVE INTERVIEWING YOU FOLKS. IT
12 MIGHT VERY WELL INVOLVE THAT. IF IT DOES, YOU CAN
13 COOPERATE WITH THEM TO THE EXTENT THAT YOU THINK IS
14 NECESSARY.

15 IF YOU DON'T WANT TO TALK TO THEM, YOU DON'T HAVE TO.
16 IF YOU WOULD LIKE TO TALK WITH THEM, IF ASKED, DO SO.
17 THANK YOU.

18 MS. GADDY: THANK YOU, YOUR HONOR.

19 MS. AHRENS: THANK YOU, YOUR HONOR.

20 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)
21
22
23
24
25

2009 CP 4006 280

STATE OF SOUTH CAROLINA
County of Richland

In the Court of Common Pleas

Brandon Jones #311373
Full name and prison number (if any) of Applicant.

vs.

State of South Carolina
Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF

RICHLAND
FILED
2009 AUG 31 PM 4:31
JEANETTE W. McBRIDE
C.C.P. & G.S.

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

- Place of detention Lee Correctional Institution, 990 Wisocky Highway
Bishopville, SC 29010
- Name and location of Court which imposed sentence Richland County Court of
General Sessions
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - 04-GS-40-8462 - CSC w/ a Minor, 1st
 - 04-GS-40-8463 - CSC w/ a Minor, 1st
 - 04-GS-40-8464 - CSC w/ a Minor, 1st
- The date upon which sentence was imposed and the terms of the sentence:
 - 30 years, 85% No parole; imposed September 20, 2005
 - 30 years, 85% No parole; imposed September 20, 2005
 - 30 years, 85% No parole; imposed September 20, 2005

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes.

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. South Carolina Court of Appeals
 ii. South Carolina Supreme Court
 iii. _____

(b) the result in each such Court to which you appealed:

- i. Appeal Dismissed; Petition for rehearing denied.
 ii. Writ of Certiorari denied
 iii. _____

(c) the date of each such result:

- i. March 13, 2008 and May 15, 2008, respectively
 ii. September 5, 2008
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. N/A
 ii. N/A
 iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) N/A
 (b) _____
 (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
 (b) Involuntary Guilty Plea
 (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) Please see attached
 (b) Please see attached
 (c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? Yes.
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No.
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No.
- (d) any other petitions, motions or applications in this or any other Court?
 Yes.

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. Petition for Writ of Certiorary regarding Appellate Court's decision.
- ii. Motion for Reconsideration (of Sentence)
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. Supreme Court of South Carolina, Columbia, SC
- ii. Richland County Court of General Sessions
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Denied.
- ii. Motion withdrawn at Counsel's strong recommendation.
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. September 5, 2008
- ii. N/A.
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A.
- ii. N/A.
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

- (a) which grounds have been presented:
- i. N/A.
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A.
 - ii. _____
 - iii. _____
15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:
- (a) This issue was not cognizable on Direct Appeal.
 - (b) This issue was not cognizable on Direct Appeal.
 - (c) _____
16. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes.
 - (b) your trial, if any? N/A
 - (c) your sentencing? Yes.
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No.
17. If you answered "yes" to one or more parts of (16), list:
- (a) the name and address of each attorney who represented you
 - i. Ned Longshore and Deborah Ahrens of the Richland County Public Defender's Office (Current Addresses Unknown)
 - ii. Lauren Mobley of the Richland County Public Defender's Office (Current Address Unknown)
 - iii. Robert M. Dudek of the S.C. Office of Appellate Defense (Current Address Unknown)
 - (b) the proceedings at which each such attorney represented you:
 - i. N. Longshore - Preliminary hearing; D. Ahrens - Plea
 - ii. L. Mobley - Sentencing
 - iii. R. Dudek - Direct Appeal
18. State clearly the relief you seek in filing this application.
That the conviction and sentence be vacated, or that the sentence be vacated and the case remanded for resentencing.
19. Are you now under sentence from any other court that you have not challenged?
No.

STATE OF SOUTH CAROLINA

VERIFICATION

County of Lee

I, Brandon Jones, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Brandon Jones

RICHLAND COUNTY
FILED
2009 AUG 31 PM 4:31
JEANETTE W. McBRIDE
C.C.P. & G.S.

SWORN to and subscribed before me this 28
day of Aug, 2009

J. Braey Lewis (L.S.)
Notary Public

My Commission Expires: 5/16/12

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Brandon Jones, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Brandon Jones
Applicant

SWORN or affirmed to and subscribed before me this
28 day of Aug, 2009

J. Braey Lewis
Notary Public

My Commission Expires 5/16/12

ATTACHMENT TO PCR APPLICATION

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) - Ineffective Assistance of Counsel

1. Plea counsel failed to actively pursue a negotiated sentence as part of a plea bargain, ultimately resulting in applicant's exposure to and the judge's subsequent imposition of the maximum sentence on all original charges.

2. Plea counsel failed to actively investigate the facts surrounding a defense which could have demonstrated applicant's legal innocence of the charges against him, and at least would have proven mitigating circumstances which would almost certainly have resulted in a reduced sentence.

3. Sentencing Counsel failed to inform applicant of contents of his PSI despite his repeated requests, making it impossible for him to object to its contents at sentencing on the basis of provable inaccuracies. Had applicant been so informed and had such objection been made, applicant submits that the judge's sentence would not have been as severe.

4. After sentencing and prior to a then-imminent reconsideration, sentencing counsel convinced applicant not to withdraw his plea - an action which could have been permissible given the state's breach of two promises made to obtain applicant's guilty plea.

5. Sentencing counsel convinced applicant to allow the withdrawal of a motion to reconsider the sentence, in spite of the fact that the maximum sentence had already been imposed on each, the judge had already stated that he did not intend to run the sentences consecutive, and applicant wished to challenge the inaccuracies in the PSI, which had at that point been discovered.

(b) - Involuntary Guilty Plea

1. Applicant did not originally intend to plead guilty. Based on information and belief, the prosecution indicated to plea counsel that, in the event of a guilty plea, certain information would not be made available to the judge at sentencing, and that the prosecution would not make any particular request as to the sentence. Upon the conditions, defendant pleaded guilty. Later, however, the information that supposedly was not to be revealed was discovered in the PSI, and the prosecution requested the "maximum, consecutive sentence" at the sentencing hearing.

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	
)	
)	2009-CP-400-6280
JONES Brandon, # 311373,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed 8/31/2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was (according to the application) represented by Deborah Ahrens, Esquire. On 9/5/2005, the Applicant pled guilty before The Honorable John L. Breeden, Jr. The Applicant had been indicted and/or pled guilty to the following: Criminal Sexual Conduct With a Minor (3 counts) - (2004-GS-40-8462;6364). According to the South Carolina Department of Corrections, the Applicant is serving a 30 year sentence for 1st Degree CSC with a minor.

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to

amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second,

counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. **Accordingly, the Respondent requests an evidentiary hearing to fully resolve the issue(s).** See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Tommy A. Thomas, Esquire regarding when the hearing should be set.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 19, 2010

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS

2009-CP-400-6280

Brandon Jones, 311373

Applicant,

vs

State of South Carolina,

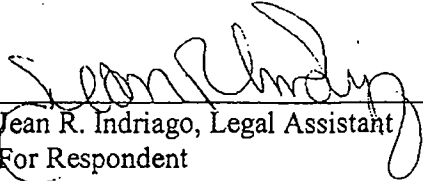
Respondent.

)
)
)
) AFFIDAVIT OF SERVICE BY MAIL
)
)
)
)
)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Tommy Arthur Thomas, Esquire
P.O. Box 88
7588 Woodrow Street
Irmo, SC 29063

DATED this 22nd day of March, 2010.


Jean R. Indriago, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) 2009-CP-40-6280

Brandon Jones,)
)
 Applicant/Plaintiff,)
)
 vs.) TRANSCRIPT OF RECORD
)
 The State of South Carolina,)
)
 Defendant.)
 _____)

February 28, 2011
Columbia, South Carolina

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

A P P E A R A N C E S:
TOMMY A. THOMAS, ESQUIRE
Attorney for Applicant/Plaintiff

BRIAN T. PETRANO, ESQUIRE
Attorney for the State

Crystal Holmes
Official Court Reporter

I N D E X

2	WITNESS	DIRECT	CROSS	REDIRECT	RE CROSS
3	Brandon Jones				
4	By Mr. Thomas	5			
5	By Mr. Petrano			41	
6	Randall Jones				
7	By Mr. Thomas	43			
8	Lauren H. Mobley				
9	By Mr. Petrano	47			
10	By Mr. Thomas			48	

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1 Monday, February 28, 2011:

2 THE COURT: This is a Richland County not a
3 Kershaw County case, it's Richland?

4 MR. THOMAS: Richland County, yes, sir.

5 THE COURT: All right. Are y'all ready then,
6 Mr. Jones?

7 MR. THOMAS: Yes, Your Honor, we're ready.

8 THE COURT: Mr. Petrano.

9 MR. PETRANO: Thank you, Your Honor. This is
10 Mr. Brandon Jones. It's a PCR application filed
11 August 31st, 2009. It's a Richland County case,
12 2009-CP-40-006280. He pled guilty in front of Judge
13 Breeden on September 15th, 2005. He was represented
14 by Ms. Lauren Mobley and Ms. Deborah Ahrens.

15 THE COURT: Okay.

16 MR. PETRANO: He had been indicted by the
17 December 2004 term of the Richland County Grand Jury for
18 three charges of CSC with a minor first degree. That
19 was 8462, 8463 and 8464. He received 30 years. There
20 was an appeal, that was an Anders appeal. The South
21 Carolina Court of Appeals dismissed that on March 13th,
22 2008. That remittitur was dated September 9th, 2008
23 making this application timely and that opinion number
24 was 2008-UP-175.

25 On that, I will turn it over to Mr. Tommy

BRANDON JONES VERSUS THE STATE OF SOUTH CAROLINA

BRANDON JONES -- DIRECT BY MR. THOMAS:

5

1 Thomas, the Applicant's current counsel of record.

2 Thank you, Judge.

3 THE COURT: All right. Let me get some -- Mr.
4 Brown, what was that, you wanted to speak to me?

5 (Conversation with Mr. Brown not on the
6 record.)

7 MR. THOMAS: Your Honor, may it please the
8 Court. We call Mr. Brandon Jones.

9 THE COURT: Come around Mr. Jones.

10 (BRANDON JONES, having first been duly sworn,
11 testified as follows:)

12 THE COURT: Please, sir, Mr. Jones, take a seat
13 and tell us your full name and spell your last name for
14 the record.

15 THE WITNESS: My name is Brandon Jones, J-o-n-
16 e-s.

17 MR. THOMAS: Please the Court.

18 THE COURT: Yes, sir.

19 DIRECT EXAMINATION

20 BY MR. THOMAS:

21 Q Mr. Jones, you brought some papers with you. Are
22 you going to need to refer to these?

23 A Not likely, sir. I don't believe so.

24 Q You do not?

25 A (The witness shakes head.)

BRANDON JONES VERSUS THE STATE OF SOUTH CAROLINA

BRANDON JONES -- DIRECT BY MR. THOMAS:

6

- 1 Q Okay. Mr. Jones, you are -- you filed a post
2 conviction relief action, is that correct?
- 3 A That's right.
- 4 Q And you have what type of sentence?
- 5 A I have 30 years violent with 85 percent, three
6 sentences run concurrent.
- 7 Q Okay. What's your max out date?
- 8 A My max out date is approximately March of 2030.
- 9 Q Okay. You will be how old when you are released?
- 10 A I will be 46, sir.
- 11 Q All right. And you are how old now?
- 12 A I'm 27.
- 13 Q All right, sir. Now, you understand what you're
14 asking for today?
- 15 A I do.
- 16 Q You're asking for a new trial?
- 17 A Yes, sir.
- 18 Q All right, sir. And you understand that this is a
19 plea so you're asking that your plea be set aside?
- 20 A Yes, sir.
- 21 Q All right, sir. You understand, you and I have
22 spoken about exposure?
- 23 A Yes, sir.
- 24 Q You understand what that term means?
- 25 A I do.

BRANDON JONES VERSUS THE STATE OF SOUTH CAROLINA

BRANDON JONES -- DIRECT BY MR. THOMAS:

7

1 Q That you could have gotten -- that you could get
2 more time ---

3 A Yes, sir.

4 Q --- than what you have now?

5 A Yes, sir.

6 Q And that's a risk that you're willing to accept?

7 A I am, sir.

8 Q All right, sir. You want to proceed today?

9 A Yes, sir.

10 Q All right. Mr. Jones, who represented you in this
11 case?

12 A For the majority of the case it was Ms. Deborah
13 Ahrens from the Richland County Public Defender's
14 Office. She took over right after I was
15 incarcerated. Originally it was -- at first it was
16 Ned Longshore and he quit the Public Defender's
17 Office after maybe a month or so.

18 Ms. Ahrens took over and she was with me until
19 after the guilty plea.

20 Q Right.

21 A Okay. Ms. Ahrens left the Public Defender's Office
22 sometime between my guilty plea and my sentencing
23 hearing.

24 Q So this was a bifurcated hearing?

25 A Yes, sir.

BRANDON JONES VERSUS THE STATE OF SOUTH CAROLINA

BRANDON JONES -- DIRECT BY MR. THOMAS:

8

1 Q Okay. You had your plea at one time and sentencing
2 was deferred?

3 A Yes, sir.

4 Q All right. Go ahead.

5 A Because one of the -- one of things I had asked for
6 when deciding whether or not to plead guilty was a
7 presentence investigation. And so naturally there
8 had to be a break in there while they did the
9 presentence investigation.

10 Q Time span-wise, how much time was between when you
11 did your plea and when you were arrested?

12 A I believe between the time I pled and the time was
13 arrested, I think it was nine months. I believe I
14 was arrested in September, pled guilty on June 20th,
15 if not mistaken, 20th or 27th. I think it was the
16 27th.

17 Q Okay. Tell me about the representation of Mr. --
18 Ms. Ahrens, how did that go? What did she do in
19 preparing the case for you?

20 A Actually, she was very helpful. As soon as she took
21 over the case, she sent me a letter, let me know
22 that she had taken over the case and of course I
23 knew at the same time because in Richland County
24 Detention Center there is a certain time span each
25 day where we're allowed to try to call the Public

1 Defender's Office. And I stress try because perhaps
2 one out of a hundred times you get through and then
3 out of each 10 times that you get through, you may
4 get to speak to your actual Public Defender as
5 opposed to a paralegal. I understand they're very
6 busy.

7 In any case, I had called persistently and
8 found out that Ms. Ahrens was taking over the case
9 and it wasn't very much longer after that that she
10 came to see me. We sat down and we talked over the
11 case for, I don't know, a good -- a good little
12 while, I'd say, and she came back periodically
13 throughout the representation to discuss updates,
14 any new piece of information, discovery, strategy
15 that she had in mind or anything that she wanted --
16 or in one case, just because I asked, I said that
17 there was something that I wished to speak to her
18 about and she was -- she was very helpful.

19 Q Okay.

20 A In a nutshell, I really appreciated her.

21 Q And you were working this case -- you and Ms. Ahrens
22 were working this case up for a plea trial?

23 A It was never decided until the very very last
24 second. We were actually sitting in the jury box
25 and she says, it's now or never, you have to decide

BRANDON JONES -- DIRECT BY MR. THOMAS:

10

1 right now. So it was never really predetermined
2 whether or not this was definitely going to be a
3 plea or definitely going to be a trial.

4 Q All right. And you made a decision to plea and why
5 did you make -- or why and how did you make that
6 decision?

7 A Okay. There were two things actually and those are
8 the things that actually I was really most pleased
9 with Ms. Ahrens with doing because they -- I think
10 they were things that probably fell outside the --
11 the normal common realm of a case.

12 And the first of those things was to get a
13 presentence investigation. That was one of the
14 conditions. I said, I will plead guilty but I would
15 like a presentence investigation.

16 Now the second thing is a little more involved.

17 Q Why did you want -- let me ask, why did you want a
18 presentence investigation?

19 A This case had a lot of sensationalism. I was -- I
20 -- before the charges were brought, I had left to go
21 to Ecuador to visit some friends that I had made
22 while I was there in high school as an exchange
23 student. The media had played it up that I had
24 committed several crimes, made a lot of threats and
25 then fled the country. And that was the story that

1 was being passed around in the media. I have in
2 that envelope on that desk copies of probably six or
3 eight different media sources that indicate those
4 things, that there were threats made, that this was,
5 you know, some sort of spree, for lack of a better
6 word. And that I had fled the country and had
7 somehow fled -- also there were a number of elements
8 that I was aware, because Ms. Ahrens had told me,
9 that were alleged in the case, circumstances, in
10 fact, surrounding what happened that were not true
11 and ---

12 Q Okay. So you felt like it was going to benefit you
13 to have ---

14 A Exactly, because I was under the impression that a
15 presentence investigation would work for the state
16 like it did in federal courts, that it would
17 actually investigate the true facts of the case and
18 then make a sentencing recommendation based on the
19 true facts.

20 Q Do you have a prior record?

21 A No, sir.

22 Q This has been your first experience with the
23 judicial system?

24 A Yes, sir, it is.

25 Q Okay. Now, you said that that you -- one of the

BRANDON JONES -- DIRECT BY MR. THOMAS:

12

1 things the presentencing -- presentence
2 investigation and report. What was the second thing?
3 A The second thing is a little more involved. When I
4 was at Alvin S. Glenn Detention Center, I had a
5 cellmate named Elijah Hunter. He and I were
6 cellmates for a time, I don't remember, some number
7 of months. And it's, I guess, important to note
8 that in Delta Pod where I was, there are no lockers
9 or locks or doors or any sort of privacy whatsoever.
10 So, of course, your reading materials are easily
11 accessible.

12 Mr. Hunter was able to put together a large
13 portion of my case and based on what he was able to
14 put together, he wrote, I believe it was the
15 Richland County Sheriff's Department, a letter that
16 contained a lot of very inaccurate and very
17 inflammatory information. That was one of the times
18 when Ms. Ahrens came to see me was to tell me about
19 that.

20 Q About your crime?

21 A Well, not only about my crime but about my mind
22 state, the things that I was doing and saying in the
23 jail. It was inflammatory and -- and inaccurate
24 beyond belief. When she showed me his statement, I
25 went ballistic in the little holding place where we

1 were. I was like, I said, there is no way. I said,
2 this didn't happen, this is not true. I said, this
3 is crazy.

4 And it was at that point, that was one of the
5 turning points where I said, you know what, I think
6 this would be better if we go to trial. I may have
7 done something but all that they're saying I did and
8 all that this guy is saying is going on, the truth
9 has got to come out at trial. I had told her that I
10 didn't -- I didn't mind being sentenced or even
11 punished but as long as it was for something that I
12 did do rather than a bunch of things that people
13 made up.

14 Q I'm sorry to put you on the spot but I need to ask.
15 you ---

16 A Okay.

17 Q What in that report was said that wasn't true, what
18 type of information had been provided?

19 A The single most damaging thing and the most
20 infuriating thing that he said in his letter to the
21 Richland County Sheriff's Department -- and notably
22 he didn't actually allege any specific new crimes,
23 but one of the things that I was most terrified of
24 was he said that I had confessed to him, that I had
25 as many as 20 other victims in the

BRANDON JONES -- DIRECT BY MR. THOMAS:

14

1 Charlotte/Mecklenburg area. And it seemed to me
2 that well since -- the Judge would probably say,
3 well, he's got a whole bunch of other victims and he
4 hasn't been punished for them, I thought the Judge
5 would certainly take that into consideration in
6 sentencing me. I think probably any reasonable
7 Judge would. So that alone was, you know, very
8 damaging.

9 Q Which would have put you different category?

10 A Definitely, as opposed to, you know, a young person
11 made a mistake, was troubled, would have put me into
12 some sort of, you know, serial predator kind of
13 category. And certainly I thought that after
14 reading Elijah's statement, that if a Judge had to
15 read what Elijah wrote, that he would certainly
16 sentence me to more time based on that.

17 And, you know ---

18 Q Now you, entered into an agreement -- you did plea,
19 so you entered into some sort of an agreement?

20 A I did. On the day that we went to plead guilty or
21 go to trial or whichever it was going to be, of
22 course I saw Ms. Ahrens in the courtroom. She, you
23 know -- she said, listen, they're not really
24 offering you anything. And I said, well, then --
25 remember I said I wasn't going -- I wasn't going to

1 plead guilty to the things that they were making up.
2 I said, if it's going to be a guilty plea, it's
3 going to be to something that I actually did, not to
4 -- not to a bunch of inaccuracies. And she said,
5 but I was able to take care of that.

6 She said -- Ms. Gaddy was the prosecutor for
7 the case and had been for the whole time, is my
8 understanding. And she said, I was able to get Ms.
9 -- that she had talked to Ms. Gaddy and my
10 understanding was that, you know, they had done
11 their own investigations and said, you know,
12 basically, whether or not the statement was reliable
13 or true, they were willing to give that and say that
14 if I were willing to plead guilty, that absolutely
15 no part of Elijah Hunter's -- of Elijah Hunter's
16 statement would be considered by the Judge at --
17 would not be submitted to him for consideration for
18 him at sentencing, that I would be sentenced apart
19 from that.

20 Q All right. So you had -- basically you had -- you
21 agreed to plea to this upon the representations that
22 you would have a presentence report?

23 A Yes, sir.

24 Q And that no part of Elijah Hunter's statement,
25 jailhouse statement, would come -- would be

BRANDON JONES -- DIRECT BY MR. THOMAS:

16

1 presented to the Judge?

2 A That is correct, on those conditions.

3 Q On those conditions. And based upon that, you pled
4 guilty?

5 A Based on that, I pled guilty.

6 Q And you pled in front of who?

7 A I pled in front of Judge John Breeden.

8 Q Okay. Then after -- he accepted your plea, is that
9 correct?

10 A Yes, sir.

11 Q Okay. And a presentencing report was ---

12 A Yeah.

13 Q --- ordered?

14 A It was.

15 Q And the statement was not introduced, is that
16 correct?

17 A At that point, no.

18 Q All right. So then what happened in regards to
19 representation? Were you continuing to be
20 represented by Ms. Ahrens?

21 A Ms. Ahrens left the Public Defender's Office shortly
22 thereafter and I don't know exactly when it was, I
23 mean, they didn't send me a letter and say, okay,
24 she's gone now. I -- I believe I actually found out
25 by trying to call the Public Defender's Office

BRANDON JONES VERSUS THE STATE OF SOUTH CAROLINA

1 because it was something that I did just about every
2 day, you know, if you tried every day for two hours
3 you might get through once a month, so. You know, I
4 finally did get through and they let me know that
5 Ms. Ahrens was gone.

6 Q All right. So who was representing you then?

7 A Ms. Lauren Mobley.

8 Q All right. And what did she do in regards to
9 preparing you for your sentencing?

10 A Nothing.

11 Q Did y'all meet?

12 A We did not.

13 Q Did you get an opportunity to talk to Ms. Mobley?

14 A I never did.

15 Q When did you speak with her?

16 A I'm sorry?

17 Q When did you speak with her?

18 A I spoke with her five minutes before sentencing.

19 Q Okay. And the -- was a presentencing report
20 prepared?

21 A It -- I believe at that point it must have been
22 since they were having the sentencing as a matter of
23 fact. It -- the presentencing report was something
24 that I had very very desperately wanted to get a
25 hold of because, as I said, I believe that it worked

BRANDON JONES -- DIRECT BY MR. THOMAS:

18

1 something like the federal system where they would
2 investigate facts and then, you know, set out the
3 sentence based on what actually occurred.

4 So, I figured that it would be relevant and I
5 was aware that in the federal system, again, there's
6 not a whole lot of state precedent that concerns
7 presentence investigations. But I was aware that
8 federal law always allows the Defendant to see the
9 presentence investigation so that he has the chance
10 to contest any of the factual basis upon which the
11 sentence might be based.

12 And, of course, because of all the
13 sensationalism, because of all of the things that I
14 -- all of the false accusations that I wanted to set
15 apart from the truth, I wanted to get a hold of the
16 presentence investigation so that I could separate
17 the chaff from the wheat.

18 MR. THOMAS: May I approach, Your Honor?

19 THE COURT: Sure.

20 Q Mr. Jones, I'm going to show you this document and
21 see if you can identify that?

22 A That's my presentence investigation.

23 Q All right. And there's the investigation and
24 attached to that is a letter from Town of Irmo, from
25 the Chief of Police?

BRANDON JONES VERSUS THE STATE OF SOUTH CAROLINA

1 A That's right.

2 Q And then there's also a letter attached to that from
3 Allen (phonetic) Miller?

4 A Yes, sir.

5 Q Now, is this the complete report?

6 A As far as I know.

7 Q All right.

8 MR. THOMAS: Your Honor, if we may, we'd like
9 to introduce this as Applicant's ---

10 THE COURT: What is it?

11 MR. PETRANO: It's already ---

12 THE WITNESS: My presentence ---

13 THE COURT: All right, it's already ---

14 MR. PETRANO: It's part of the record on appeal
15 from the Anders ---

16 THE COURT: Which is unusual but Mr. Dudek did
17 a good job.

18 MR. THOMAS: All right.

19 Q Now, what happened at your sentencing?

20 A At my sentencing I -- naturally they brought me to
21 the jail. A few minutes before we were to be
22 brought up to the courtroom, they called me down
23 there and let me talk to Ms. Mobley, you know, in
24 the little area that they've got for that. And she
25 introduced herself and I said, you know, nice to

BRANDON JONES -- DIRECT BY MR. THOMAS:

20

1 meet you and everything. And we very briefly
2 discussed the sentencing possibilities and ---

3 Q Well, what was your -- what was your understanding
4 in regards to a sentencing range?

5 A Well, I knew that the possibility was zero to 90. I
6 knew that neither of those extremes were very
7 likely. Ms. Ahrens had made the statement at one
8 point during the representation that she thought
9 that based on what actually occurred, she thought
10 that I would probably receive a sentence of about 10
11 years. Okay.

12 And also at that point, Ms. Mobley suggested
13 that I might receive a sentence of as much as 14 to
14 16 years. And I thought that was harsh but this is
15 our legal system. And now -- notably Ms. Ahrens had
16 indicated that she had spoken to Judge Breeden
17 before the guilty plea and he had indicated that if
18 I pled guilty, he intended to give me concurrent
19 sentences but substantial ones, although he
20 certainly did not indicate anything about the
21 maximum sentence.

22 Umm ---

23 Q Were -- go ahead.

24 A I'm sorry. You had asked about what happened at the
25 sentencing. Now, at this point I had been asking to

1 please let me see the presentence investigation. I
2 had been calling the Public Defender's Office. I
3 had gotten my dad to please -- because, of course,
4 it's much easier for people on the street to try to
5 get a hold of the Public Defender's Office than it
6 is for us in jail, and I told him that that was the
7 most important thing to me was seeing that
8 presentence investigation before I was sentenced.

9 Now -- let's see...

10 Q So -- so did you see the report? When you went for
11 sentencing had you seen the presentence report?

12 A When I went for sentencing that day, when I came to
13 the courtroom, I had not yet seen the report.

14 Q All right.

15 A And I'm trying -- let's see -- I'm a little bit
16 confused here because there was actually another
17 time that I came to court and spoke to her too later
18 on the reconsideration so I'm trying to get my...

19 Q Well, let's try to simplify it a little bit.

20 A All right.

21 Q When did you actually see the report? Was it at the
22 sentencing or the motion -- you did a motion for
23 reconsideration on the sentence?

24 A I believe that the first time that I saw the
25 presentence report -- no, did I see it, no. I

BRANDON JONES -- DIRECT BY MR. THOMAS:

22

1 absolutely did not see it at the sentencing because
2 I would have objected to its contents. I would have
3 very very strongly objected to its contents, to the
4 things that were included and to the things alleged
5 and the things it did not ---

6 Q All right.

7 A --- include.

8 Q Let's hold that thought. Maybe this is the
9 appropriate time for me to ask you this question.
10 Ms. Mobley did object to the presentencing report,
11 is that correct?

12 A She did -- yes, she did.

13 Q On what basis did she object?

14 A She objected on the grounds that it did not include
15 relevant information possibly from family members,
16 maybe from community -- members of the community,
17 something, community input, something of that
18 nature. I'm not really sure how much legal weight
19 that objection might have carried but it wasn't
20 something that I really chose to follow through with
21 very hard in the appeals process because I didn't
22 find in my research that it had a whole lot of legal
23 weight.

24 MR. THOMAS: Your Honor, beg the Court's
25 indulgence.

1 THE COURT: Yes, sir.

2 MR. THOMAS: May I approach, Your Honor.

3 THE COURT: Sure.

4 Q Brandon?

5 A Yes, sir.

6 Q Let me show you this part of the transcript from
7 your sentencing and ask you to look at lines -- this
8 is page 5, look at lines 14 through 18.

9 A Yes. Read it?

10 Q Yeah, it's short.

11 A Okay. I believe this is Ms. Mobley talking. It
12 says, Your Honor, I believe that the report is
13 incomplete, provides you no new information. We at
14 this time would be asking that the department go
15 back and interview the family members that they
16 should have been done -- as should have been done
17 with this report initially.

18 Q Does that pretty much summarize what her objection
19 was to the report, was that your family had not
20 interviewed and she felt -- had not been
21 interviewed, wasn't included in the report, and
22 didn't provide any new information?

23 A Right, that was her only objection at the time.

24 Q All right. And what was ---

25 A I point out, at this time I had not seen the

BRANDON JONES -- DIRECT BY MR. THOMAS:

24

1 presentence investigation.

2 Q All right. I'm going to bring you over to page 6
3 and lines 7 through 10. If you would read that for
4 me, please.

5 A This is the Court speaking, if the facts are as
6 reported in this report are as they are, I can't
7 imagine anything else that would be said by anyone
8 else that would have had any significant influence
9 on my sentence.

10 Q All right. So the Court -- so the Judge denied that
11 motion and the objection to the -- to the
12 introduction of the presentencing report?

13 A Yes, sir, it would seem so.

14 Q All right. And this issue actually went up on
15 appeal?

16 A It did.

17 Q And on the appeal, was the issue the same?

18 A I added to it. It also -- I also alleged that it
19 did not contain relevant information from other
20 sources. I really don't remember the specifics of
21 the appeal.

22 Q All right. Let me ---

23 MR. THOMAS: May I approach again, Your Honor?

24 THE COURT: Yes, sir.

25 Q I want to show you this document and ask you if you

1 can identify this document?

2 A The Anders Brief filed on my behalf by Mr. Dudek.

3 Q All right. And I want to bring you over to page 8.

4 A Uh-huh.

5 Q I'm going to ask you to read this paragraph, if you
6 would please (indicating). Just read it to
7 yourself.

8 (Complied.)

9 A All right.

10 Q All right. And that -- does that correctly
11 summarize what you feel like the issue on appeal
12 was?

13 A On appeal?

14 Q And what is the issue on appeal?

15 A That the presentence investigation in this case did
16 not contain pieces of information that would have
17 been relevant and might have mitigating.

18 Q Okay. Basically, that it didn't contain any new
19 information?

20 A Right.

21 Q Didn't contain the statements from your family?

22 A For example, yes.

23 Q Okay. All right. Now, let's move on ---

24 A Okay.

25 Q --- to you filed a motion for reconsideration on the

BRANDON JONES -- DIRECT BY MR. THOMAS:

26

1 sentence?

2 A I did. I asked Ms. Mobley before we went up, not
3 having seen the presentence investigation, I still
4 thought that a low sentence was a possibility. I
5 said, if there is -- if the final sentence is more
6 than eight years, and I figured that it probably
7 would be, file a motion for reconsideration.

8 Q All right. What happened in regards to the motion?

9 A She did file a motion for reconsideration. We went
10 back up. I don't remember the date that they
11 brought me back to court on that.

12 Q Okay. And did you go forward with the motion?

13 A They had me downstairs in the holding cell and, of
14 course, they called me to come speak to her. This
15 was the second time that I had spoken to her, the
16 first time having been at the sentencing hearing.
17 So this is now the third time that I am in court and
18 we began to talk about the reconsideration. She
19 said that she had not believed that the Judge would
20 be inclined to reduce my sentence. And that in
21 fact, there was a substantial chance that I would
22 receive more time on a reconsideration.

23 While we were talking, I noticed that she had a
24 copy of what looked like the presentence
25 investigation or maybe I asked her, I don't really

BRANDON JONES VERSUS THE STATE OF SOUTH CAROLINA

1 recall. I said, do you have a presentence
2 investigation? And she said, well, yes, and she
3 picked it up and gave it to me. And at that point,
4 for the first time now, on reconsideration, already
5 been convicted, already been sentenced, I am finally
6 getting to see this presentence investigation. And
7 I was extremely disturbed by some of the things that
8 it contained. And had I seen it beforehand, I would
9 definitely have objected.

10 Q All right. Now, do -- I know that you know this
11 case exceptionally well. Do you remember the date
12 of the report?

13 A I believe it was 7/25.

14 Q Okay.

15 A 7/25/05.

16 Q Okay. And when was the date of your sentencing?

17 A That would be September the 15th.

18 Q Of '05?

19 A (Affirmative response.)

20 Q So roughly two months in there ---

21 A Between the time the report was completed.

22 Q --- the report was completed and when you were
23 sentenced?

24 A Yes.

25 Q And did you ever during that period of time ever

BRANDON JONES -- DIRECT BY MR. THOMAS:

28

1 receive a copy of this presentencing report?

2 A I did not, despite repeated attempts.

3 Q Okay. Now, one thing the Judge asked you when you
4 were doing your plea.

5 A Uh-huh.

6 Q He asked you if there was -- if anyone had promised
7 you anything in exchange for your plea?

8 A Right.

9 Q All right. Did you raise any issues or tell the
10 Judge any information about what your understanding
11 was ---

12 A About Hunter's statement?

13 Q Yeah, about your plea?

14 A I understand. The thing about it is, granted, they
15 had agreed not to submit Elijah's statement for
16 consideration at sentencing. And the thing about
17 that is, that the Judge says did they promise you
18 anything, how do you say, well, yes, Your Honor, in
19 return for pleading guilty, they promised they
20 wouldn't give you this, you know, very damaging
21 statement from my cellmate because then he already
22 knows what it is, what's being concealed and ---

23 Q Right.

24 A --- so it would pretty much eliminate the whole
25 purpose of ---

BRANDON JONES VERSUS THE STATE OF SOUTH CAROLINA

1 Q So you didn't say anything.

2 A --- having the agreement. And then also on top of
3 that, it was an agreement between me and the
4 prosecutor, Ms. Gaddy, who was very nice, and Ms.
5 Ahrens and I believed that the State's word was
6 good, that Ms. Gaddy would do what she said she was
7 going to do. So I assumed that Elijah Hunter's
8 statement would not be included for consideration.

9 Q Okay. Now, you got a copy of the presentencing
10 report. Do you need to see this or you...

11 A Possibly ---

12 MR. THOMAS: Your Honor, may I approach?

13 THE COURT: Sure.

14 Q What was wrong, if anything, with the presentencing
15 report? Were there errors that you saw?

16 A For the most part, the presentence investigation, in
17 and of itself, not counting the back two pages, was
18 pretty mundane, prior record, supervision history,
19 special needs, residence, education. There was only
20 one thing that I had a very serious problem with.
21 And that was a statement by then Chief Brian Buck,
22 or I guess he's still the Chief, talking about me
23 and his opinion of the crime and of what he believed
24 my sentencing -- sentence -- sentencing
25 possibilities should be.

BRANDON JONES -- DIRECT BY MR. THOMAS:

30

1 Q Did -- did any of the information that Elijah Hunter
2 had put in his statement, did any of that
3 information end up in the presentencing report?

4 A That was my biggest concern ---

5 Q Okay.

6 A --- when I saw it at the reconsideration is that in
7 the third paragraph, the most damaging portions of
8 Elijah Hunter's statement are not only presented but
9 they are presented as fact. It says in fact, Jones
10 admitted to Hunter that he has molested upwards of
11 20 kids in the Charlotte/Mecklenburg area and that
12 he has found nothing wrong with his actions.

13 Sir, that never happened. I haven't even lived
14 in Charlotte since I was seven. True, I went to
15 church there. I frequent in Charlotte but, I mean,
16 I lived at my parents' house, I was a student. And
17 yet this has been presented as fact.

18 Q So you had -- you had a deal?

19 A Yeah.

20 Q Basically?

21 A Right.

22 Q That no part of Hunter's statements would come in or
23 be presented to the Judge that you entered into for
24 this plea?

25 A Right.

BRANDON JONES VERSUS THE STATE OF SOUTH CAROLINA

1 Q And it in fact did come in?

2 A It did, several of them. There are -- there's more
3 here, a couple of other things. But again, they're
4 the most damaging portions ---

5 Q And what are the other things that were in Hunter's
6 statement that came in?

7 A Let's see, I express no desire to change my
8 behavior, I'd like to flee the country to be with
9 another young boy in Ecuador and I find nothing
10 wrong with my actions and I claim that I'm guilty of
11 nothing but love in the first degree.

12 Q Okay. And none of those were true?

13 A No, sir.

14 Q All right. Did -- what else was in that agreement
15 that you found that was untrue?

16 A You mean in the statement?

17 Q Well, in the -- in the presentencing report?

18 A Oh.

19 Q Now is that everything that Hunter said, that's all
20 the material?

21 A That is all -- that is -- that is the extent of his
22 input here, yes.

23 Q All right, okay

24 A All right.

25 Q Let's move on to other errors that you saw in the

BRANDON JONES -- DIRECT BY MR. THOMAS:

32

1 presentencing ---

2 A All right.

3 Q -- report.

4 A Again this is still coming from Mr. Buck's
5 statement.

6 THE COURT: Help me out, Mr. Thomas. Didn't
7 the presentence report postdate the guilty plea, the
8 acceptance ---

9 MR. THOMAS: It did, it did, it did.

10 THE COURT: So how can something post event
11 have affected his ability to enter the guilty plea, I'm
12 confused?

13 MR. THOMAS: Well, Your Honor, I think that
14 what happened is ---

15 THE COURT: No, no, no, no.

16 MR. THOMAS: Okay.

17 THE COURT: All right. This is my question.

18 MR. THOMAS: Yes, sir.

19 THE COURT: I'll repeat it. How can something
20 after an event affect the decision before the event?

21 MR. THOMAS: I think that the ---

22 THE COURT: He pled guilty.

23 MR. THOMAS: Yes, sir.

24 THE COURT: Now, we're here about whether or
25 not the plea was voluntarily, knowingly entered. So

BRANDON JONES VERSUS THE STATE OF SOUTH CAROLINA

1 he's already pled guilty.

2 MR. THOMAS: Right.

3 THE COURT: So subsequent to the guilty plea
4 that would have made him change his mind if it had
5 occurred prior to the guilty plea?

6 MR. THOMAS: I think what happened, he didn't
7 get the benefit of the bargain. And with -- with --
8 with it being here and there ---

9 THE COURT: What was the bargain?

10 MR. THOMAS: The bargain was that he ---

11 THE COURT: The bargain was that you would get
12 X amount of years if you had the presentencing report?

13 MR. THOMAS: No, sir. No, sir.

14 THE COURT: Well, what was the bargain?

15 MR. THOMAS: It was that in the sentencing
16 portion of that -- of the whole thing -- in the
17 sentencing portion ---

18 THE COURT: The bargain was he going to get
19 concurrent time, was it not?

20 MR. THOMAS: It was that but it also ---

21 THE COURT: Did he get -- go ahead.

22 MR. THOMAS: But also the bargain was that no
23 portion of the statements made by Hunter, who was the
24 jailhouse informant, so to speak, that none of that
25 information, because of its reliability or whatever,

BRANDON JONES -- DIRECT BY MR. THOMAS:

34

1 would go to the Judge because the same Judge ---

2 THE COURT: Who was this deal made with?

3 MR. THOMAS: It was made with the Solicitor,
4 Your Honor, and also with the -- his Public Defender
5 negotiated that deal with the Solicitor's Office.

6 THE COURT: So whatever this talk was back and
7 forth, they didn't believe -- that it didn't affect the
8 sentence that was imposed by John Breeden, did it?

9 MR. THOMAS: I'm sorry, Your Honor?

10 THE COURT: The deal was for concurrent time.

11 MR. THOMAS: Right.

12 THE COURT: All right, you got concurrent time?

13 MR. THOMAS: Yes, sir.

14 THE COURT: All right. I'm sorry, go ahead. I
15 wanted ---

16 MR. THOMAS: But I think there's more to the
17 deal.

18 THE COURT: Well, go ahead and explain it to me
19 on the record. I'm sorry for interfering with ---

20 MR. THOMAS: No, no, no, no. There is -- I
21 think there was more to the deal. And what happens,
22 because I had to think about it too, I think that by,
23 you know, bifurcating it, you know, we end up thinking
24 about it as two separate events. But really what it is
25 is a continuation of one event. Normally that would

1 flow over into the plea portion of it if it was all done
2 at the same time.

3 THE COURT: All right.

4 MR. THOMAS: All right.

5 THE COURT: Continue.

6 MR. THOMAS: Yes, sir.

7 Q Mr. Jones, kind of move things long.

8 A Okay.

9 Q Now, you indicated there were problems in the report
10 that were in error?

11 A Yes.

12 Q What basically was said, that you were targeting
13 families?

14 A Yes, that was one of the things that -- that ---

15 Q Was that true?

16 A --- disturbed me. No, sir, it was not. When he's
17 talking about what happened in the crime, one of his
18 statements is, when the crime started to unravel
19 around him, he threatened the boys by saying he
20 would harm their families.

21 Q And that was not true?

22 A Not only is that not true, it is blatantly
23 contradicted by the victim's statement.

24 Q All right. Now, then there was an incident in a
25 church in North Carolina?

BRANDON JONES -- DIRECT BY MR. THOMAS:

36

1 A There was an incident but he alleges that I sexually
2 assaulted a 10 year old boy at a church function.
3 And the facts, even of the allegations, didn't lend
4 themselves to that description.

5 Q All right. And that you offered no apology or
6 showed no remorse?

7 A At least five times he says that I didn't offer an
8 apology or show remorse. He says that I have no
9 intention of changing. That I should not be in any
10 type of alternative sentencing environment. He says
11 four or five times that I was unremorseful.

12 I was only contacted by the police department
13 one time. An officer showed up at the jail. He
14 read me my rights, said, do you want to make a
15 statement. I said, no, sir, my attorney told me not
16 to talk to you. And he said, okay, thank you very
17 much. And that was the only time that I ever spoke
18 to the police.

19 Q Did you have any contact with the victims or the
20 victims' families to show any -- to write any
21 letters of apology or show any remorse?

22 A I did actually. Even -- I don't remember at what
23 point it was but there was one point that I wrote a
24 10 page letter to the children involved, a five page
25 letter to their parents. I also wrote Ms. Ahrens.

BRANDON JONES VERSUS THE STATE OF SOUTH CAROLINA

1 I also wrote Agent Crystal Boyd of the Kershaw
2 Office of Probation, Pardon and Parole. All of
3 those letters would show a state of deepest remorse
4 and sympathy for the people involved in this whole
5 mess.

6 Q And the fourth issue that you pointed out to me was
7 that the allegation that you let your visa and your
8 return ticket expire. In other words, that you were
9 trying to stay in South America, I guess, to avoid
10 prosecution.

11 A Exactly. What happened was the day that I was
12 supposed to make the return flight, Riobamba, the
13 city where I was staying, was in riots. And getting
14 to Quito to get on a plane was a virtual
15 impossibility. But I think it should be noted that
16 I didn't just let the plane ticket expire, I called
17 Travelocity and tried to reschedule it for another
18 day and was told that I could not because I didn't
19 have funds in my account which previously it had
20 \$2,000 in it and that was because law enforcement
21 had frozen it at that point although I didn't know
22 it.

23 Q Okay.

24 A But I did make an effort -- and while I perhaps
25 didn't show the greatest diligence in trying to

BRANDON JONES -- DIRECT BY MR. THOMAS:

38

1 return to the United States, I admit I wasn't
2 thrilled about the prospect, but I did intend to
3 return.

4 But the point ---

5 Q Now -- go ahead?

6 A I believe that the whole point was essentially that
7 all of this is either patently untrue, unprovably
8 false and that if I had had the chance, I would have
9 certainly objected to it. And also, of course,
10 you've got Elijah Hunter's statement, I would have
11 objected to that. In fact, at the resentencing
12 consideration, I was talking to Ms. Mobley, and once
13 I saw Elijah's statement in there, I said, no wonder
14 he gave me 30 years. I said, look at this letter.
15 I said, it's full of inaccuracies, it's full of
16 false information. And in addition, they've broken
17 a plea deal. I told her, that by my understanding
18 that gave me the right to withdraw the plea. And
19 she said, no -- she said, it's too late to withdraw
20 the plea. You can't withdraw the plea. I said, but
21 my understanding was that if they breach a plea
22 bargain, you can withdraw the plea. I said, I want
23 to withdraw. I said, we have to go to trial because
24 at least then I'll be sentenced for something that I
25 did rather than something that some people made up.

BRANDON JONES VERSUS THE STATE OF SOUTH CAROLINA

1 Q All right. Did -- did you receive the benefit of
2 your bargain?

3 A No, sir.

4 Q You bargained for before you entered into your plea?

5 A No, sir, not at all.

6 Q Why did you not ---

7 A Why did I not ---

8 Q --- receive the benefit?

9 A Because the most damaging portions of the statement
10 that I was told, I was promised would be omitted,
11 are contained in the presentence investigation. I
12 wasn't allowed to see the presentence investigation.
13 And then on top of that, the Judge made the
14 statement that he was basing his sentence off this
15 presentence investigation. There's nothing else in
16 it that's inflammatory. This is the only logical
17 thing that he could have based that sentence off of.

18 Q And you're talking about the statement made by the
19 Court back on transcript page 6.

20 A Yes, sir.

21 Q Right. Now, do you feel like you're prejudiced in
22 any manner?

23 A I feel like it -- it's a virtual certainty that had
24 these things that I've contested here today not been
25 included, that if I had had the chance to object to

BRANDON JONES -- DIRECT BY MR. THOMAS:

40

1 them on the record as I should have had, as due
2 process guarantees, that I would not be sitting here
3 with a 30 year sentence today.

4 Q Okay. You feel like that the Court was inflamed by
5 these falsities?

6 A I would have been. I was, so I feel certain --
7 certainly Judge Breeden would have been.

8 Q Now, Brandon, we've talked -- you and I have spent a
9 lot of time together. This is your day in court,
10 you understand that?

11 A Yes, sir.

12 Q And this is your opportunity to present what
13 information that you have to the Court. I have
14 attempted to go through everything that we've spoken
15 about. Is there anything else that you would like
16 to tell the Court or anything else that I might have
17 mistakenly overlooked?

18 A One final thing was that when we were talking about
19 the presentencing -- or when I was at the
20 resentencing and I told her that I wanted to
21 withdraw my guilty plea, Ms. Mobley said first of
22 all that I couldn't. Then she -- she said -- I told
23 her I wanted to be sentenced based on something that
24 I actually did rather than something someone made
25 up. She said, well, what do you want to tell them,

BRANDON JONES VERSUS THE STATE OF SOUTH CAROLINA

1 Brandon, that you slipped and fell and accidentally
2 did these things with these three boys? She said,
3 and forget the resentencing, it's not going to do
4 any good. I mean, how do you tell your lawyer, no,
5 like that. She's got the law degree, she must be
6 right. So I withdrew the motion.

7 Q Thought it was hopeless?

8 A Yes.

9 MR. THOMAS: Your Honor, I have no further
10 questions.

11 THE COURT: Mr. Petrano.

12 CROSS-EXAMINATION

13 BY MR. PETRANO:

14 Q The bargain, the deal was, the way you saw it, was
15 to keep the statements from the Judge?

16 A That's true.

17 Q Right?

18 A Yes, sir.

19 Q This was an Anders appeal, right?

20 A The appeal was an Anders appeal, yes, sir.

21 Q And that means you get to write your own brief, so
22 to speak, right?

23 A Certainly. But these are issues that wouldn't be
24 cognizable under the appeal, only on PCR.

25 Q Sir, you are very articulate, obviously you've done

BRANDON JONES -- CROSS BY MR. PETRANO:

42

1 your homework and that seems to be about right. My
2 question obviously then is, did you bring this up in
3 your pro se brief?

4 A Yes.

5 Q Okay.

6 A I did try.

7 Q Do you have that?

8 A Do I have my pro se brief with me, no, sir.

9 Q Okay.

10 A I have the petition for rehearing though.

11 Q Okay.

12 A And all of things that I just said were contained in
13 there.

14 Q What's the maximum, if you recall -- I'm not trying
15 to put you on the spot. What's the maximum for CSC
16 at that time ---

17 A At that time ---

18 Q At that time?

19 A At that time was 30 years.

20 MR. PETRANO: Nothing further, thank you.

21 MR. THOMAS: Nothing further, Your Honor.

22 THE COURT: You my step down, sir.

23 THE WITNESS: Thank you.

24 (The witness leaves the witness stand.)

25 THE COURT: Mr. Petrano.

BRANDON JONES VERSUS THE STATE OF SOUTH CAROLINA

RANDALL JONES -- DIRECT BY MR. THOMAS:

43

1 MR. THOMAS: I'm sorry, Your Honor, nothing
2 further from this witness. We do -- we do have one
3 other witness.

4 THE COURT: That's fine, I mean, just nothing
5 further ---

6 MR. THOMAS: I didn't mean to close.

7 THE COURT: That's all right. Call your next
8 witness.

9 MR. THOMAS: Your Honor, if it please the
10 Court, a very short witness. We call Mr. Randy Jones to
11 the stand.

12 THE COURT: Randy Jones?

13 THE WITNESS: Correct.

14 (RANDALL JONES, having first been duly sworn,
15 testified as follows:)

16 THE COURT: All right. Take your seat, Mr.
17 Jones. Tell us your full name and spell your last name
18 for the record.

19 THE WITNESS: Randall Jones, J-o-n-e-s.

20 MR. THOMAS: May it please the Court.

21 THE COURT: Yes, sir.

22 DIRECT EXAMINATION

23 BY MR. THOMAS:

24 Q Mr. Jones, you're related to Brandon Jones?

25 A Yes, he's my son.

BRANDON JONES VERSUS THE STATE OF SOUTH CAROLINA

RANDALL JONES -- DIRECT BY MR. THOMAS:

44

1 Q All right. And you're under oath, you understand
2 that?

3 A Yes, sir.

4 Q All right. You intend to tell the truth today?

5 A Of course.

6 Q All right. Mr. Jones, you've heard testimony by
7 your son that he was attempting to obtain a copy of
8 the presentence evaluation, presentence report?

9 A Yes, sir.

10 Q And were you involved in assisting your son in
11 regards to -- as he traveled through this process?

12 A Yes, sir, I tried several times. I was kind of a go
13 between between him and Ms. Ahrens. And then once
14 Ms. Mobley took it over, I tried to communicate, ---

15 Q Yes, sir?

16 A --- you know, to her.

17 Q So you were active in trying to assist -- trying to
18 help your son?

19 A Correct.

20 Q All right. Now, did you call or what efforts did
21 you make, if any, to obtain a copy of your son's
22 presentencing report?

23 A I tried to get a copy of the presentence
24 investigation from the time that it was ordered.
25 And I think I probably made six or eight different

1 calls to the Public Defender's Office and trying to
2 get it. Sometimes I'd get a paralegal, sometimes I
3 would have to leave a voice mail, sometimes I'd
4 leave a message for either Ms. Ahrens or Ms. Mobley,
5 either one. I don't remember, you know, any
6 particular dates or who, I just remember making a
7 whole lot of calls trying to get a copy of the
8 presentence investigation.

9 Q Did you ever get a copy?

10 A No, I did not.

11 Q When did you ever receive a copy of the report?

12 A I believe it was several months after the
13 sentencing, I don't remember the -- it's whenever he
14 was -- he went wherever he was when they sent all
15 this stuff to me.

16 Q Why did you want a copy of it?

17 A Well, primarily he had told me that he had reached
18 an agreement with -- between Ms. Ahrens and the
19 Public -- and the prosecutor's office that he would
20 plead guilty if, you know, based on the fact that
21 there was no mention of the -- Elijah Hunter's
22 statement presented to the Judge. And that was a
23 big concern.

24 Also, we wanted to make sure that they realized
25 that he had community backing, his church supported

RANDALL JONES -- DIRECT BY MR. THOMAS:

46

1 him and, you know, that he was really a good kid.

2 Q Hear the other side?

3 A Right, hear the other side and none of that was ever
4 brought up. Everything in it was pretty much
5 negative. And I'd like to point out too that even
6 though I think we met Ms. Mobley just briefly just
7 before the sentencing, she told us then that he was
8 going to do some time. She knew he was going to do
9 some time but she indicated she thought it would be,
10 you know, just a few years, that it would be nothing
11 like the maximum.

12 MR. THOMAS: Beg the Court's indulgence.

13 THE COURT: Yes, sir.

14 (Pause.)

15 MR. THOMAS: No further questions, Your Honor.

16 THE COURT: All right, Mr. Petrano.

17 MR. PETRANO: No questions, thank you.

18 THE COURT: All right, you may step down, sir.

19 (The witness leaves the witness stand.)

20 THE COURT: You finished?

21 MR. THOMAS: Yes, sir.

22 THE COURT: We'll take a short break. We'll
23 come back and hear the State's case.

24 MR. THOMAS: Thank you.

25 (The Court was in recess.)

BRANDON JONES VERSUS THE STATE OF SOUTH CAROLINA

LAUREN H. MOBLEY -- DIRECT BY MR. PETRANO:

47

1 THE COURT: Yes, sir, Mr. Petrano, go ahead.

2 MR. PETRANO: The State calls Ms. Mobley.

3 (LAUREN H. MOBLEY, having first been duly
4 sworn, testified as follows:)

5 THE COURT: Please take a seat. Tell us your
6 full name and spell your last name for the record.

7 THE WITNESS: My name is Lauren Heyward Mobley,
8 M-o-b-l-e-y.

9 DIRECT EXAMINATION

10 BY MR. PETRANO:

11 Q Ma'am, have you been present here throughout the
12 testimony today?

13 A Yes, I have.

14 Q Can you tell us for the most part, do you just agree
15 with what he said as far as your involvement?

16 A I do. I mean, I had very limited involvement with
17 the case but when I was reviewing my file, I did see
18 a note from Ms. Ahrens recounting a discussion
19 between her and the Solicitor Erin Gaddy noting that
20 there would be a serious problem and the plea
21 wouldn't go through if Elijah Hunter's testimony was
22 allowed during the plea proceedings.

23 Q And I only have one other question. In your
24 experience, during sentencing at guilty pleas, isn't
25 it oftentimes stuff that's really not favorable that

BRANDON JONES VERSUS THE STATE OF SOUTH CAROLINA

LAUREN H. MOBLEY -- CROSS BY MR. THOMAS:

48

1 comes in?

2 A Sure, I mean it's a guilty plea.

3 MR. PETRANO: Nothing further?

4 MR. THOMAS: Your Honor, beg the Court's
5 indulgence just for one second?

6 THE COURT: Sure.

7 (Pause.)

8 CROSS-EXAMINATION

9 BY MR. THOMAS:

10 Q Ms. Moblely, just a couple questions.

11 A Yes.

12 Q You do have that motion in your file?

13 A I do.

14 Q All right. Let me ask you about the presentence
15 investigation. Did you get an opportunity to who
16 that to your client?

17 A I don't -- to be honest with you, there is nothing
18 reflected in my notes about us discussing the
19 presentence investigation report; so, I don't
20 recall.

21 Q Okay. And really, like you said, you had a limited
22 time in regards to this case?

23 A I didn't enter this case until after the plea was
24 heard with Ms. Ahrens in front of Judge Breedon.

25 Q All right. And is it true, I guess, was his

BRANDON JONES VERSUS THE STATE OF SOUTH CAROLINA

1 testimony correct in that the opportunity that you
2 got to speak with him was just prior to entering --
3 to the sentencing phase?

4 A Yes. I mean, you know, I don't have anything
5 reflected in my notes other than I spoke to him
6 right before the sentencing and I spoke to him on
7 the day, I guess, he was brought over about the
8 motion to reconsider.

9 Q All right. Do you remember the day of the motion
10 for reconsideration, do you remember him receiving a
11 copy or looking at the presentencing report at that
12 time?

13 A Nothing is noted in my file and it's been too long
14 so I really don't remember.

15 Q You don't remember?

16 A Huh-uh.

17 MR. THOMAS: Beg the Court's indulgence?

18 THE COURT: Yes, sir.

19 (Pause.)

20 MR. THOMAS: No further questions, Your Honor.

21 THE COURT: Mr. Petrano.

22 MR. PETRANO: Nothing, Your Honor.

23 THE COURT: All right, you may step down.

24 THE WITNESS: Thank you, Your Honor.

25 (The witness leaves the witness stand.)

1 MR. PETRANO: May this witness be excused at
2 this time?

3 THE COURT: New York is a good town.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Anything further?

6 MR. PETRANO: Your Honor, the State just has
7 the brief argument, probably in reply, let Mr. Thomas go
8 first.

9 THE COURT: All right, Mr. Thomas.

10 MR. THOMAS: Your Honor, may it please the
11 Court.

12 What I see here is basically when we -- looking
13 at the voluntariness of the plea, it's my thoughts that
14 the plea was entered into based upon three things. The
15 Judge said the sentencing was going to be concurrent,
16 the Judge was going to be agreeable or the Solicitor was
17 going to be agreeable to a pretrial (sic) investigation
18 or report. And the third thing, which I think is
19 verified by Ms. Mobley's record and file, is that no
20 statement or any information from the jailhouse
21 informant -- informant was going to be presented to the
22 Judge.

23 The plea was entered into based upon those
24 three agreements, three factors, therefore if this
25 information was then submitted, then it's a violation of

1 the agreement, it also puts him in a situation where the
2 plea ---

3 THE COURT: So you're saying that you're client
4 had a contract with the State to exclude certain
5 evidence from the Judge's view?

6 MR. THOMAS: Well, I -- I ---

7 THE COURT: Well, help me out.

8 MR. THOMAS: Well, I ---

9 THE COURT: The State had agreed to hide
10 evidence ---

11 MR. THOMAS: No, I don't -- I'm not sure that
12 it's necessarily hiding evidence.

13 THE COURT: Keep it away from him.

14 MR. THOMAS: Yeah. I think -- I think what it
15 is is that, I think both the Defendant -- Defense
16 attorney and the Solicitor's office understood that this
17 is coming from a jailhouse ---

18 THE COURT: Was this brought to Judge Breeden's
19 attention?

20 MR. THOMAS: No, Your Honor.

21 THE COURT: All right.

22 MR. THOMAS: It was not brought to the Judge's
23 attention because my client did not see the ---

24 THE COURT: Does your client have a right to
25 look at a presentencing, investigation or report?

1 MR. THOMAS: I think so, Your Honor.

2 THE COURT: All right, cite me some authority
3 that ---

4 MR. THOMAS: Well ---

5 THE COURT: --- supports your position.

6 MR. THOMAS: There is no -- there's no state
7 authority. But ---

8 THE COURT: Then cite me some federal ---

9 MR. THOMAS: But there is some federal
10 authority ---

11 THE COURT: We don't -- I must warn you, the
12 people in the state never thought very much of the
13 federal government, Mr. Thomas ---

14 (Laughter.)

15 MR. THOMAS: And our thing is that, you know,
16 we never got very far when they first started the
17 presentencing reports anyway. I mean, they kind of
18 fizzled out after a short period of time.

19 THE COURT: One year, sir.

20 MR. THOMAS: Yeah, so. Your Honor, my client
21 has prepared ---

22 THE COURT: Have you shown this to Mr. Petrano?

23 MR. THOMAS: I have not shown it to ---

24 THE COURT: Well, I can't consider it unless
25 you have Mr. Petrano take a look at it. He might have

1 an objection. And this is an argument, the time for
2 presenting evidence has passed, you rested. But anyway,
3 I'll let you proffer it anyway. Let Mr. Petrano take a
4 look at it.

5 MR. PETRANO: It looks like it's just an
6 argument.

7 MR. THOMAS: You Honor, I want to submit the
8 document. I would be more than happy to ---

9 THE COURT: That's all right. You can proffer
10 it, it doesn't matter.

11 MR. THOMAS: Yes, sir.

12 THE COURT: I wouldn't want anybody to feel
13 aggrieved that they couldn't present something so would
14 you like to mark it and make it part of the record?

15 MR. THOMAS: Your Honor, if I it may be easier
16 just for me to ---

17 THE COURT: Okay.

18 MR. THOMAS: If I may submit that in a couple
19 of days and I'll find -- it's my understanding that the
20 federal ---

21 THE COURT: Stop, we're not in federal court,
22 we're in state court, so the rules aren't necessarily co
23 -- they don't apply -- I mean, help me out. You're
24 asking me to consider something I'm not allowed to
25 consider?

1 MR. THOMAS: Your Honor, there is -- there is
2 no -- there is no state authority that would say that
3 he's entitled to ---

4 THE COURT: All right. So if there's no state
5 authority, what can I do about it?

6 MR. THOMAS: Well ---

7 THE COURT: You want me to forget state law and
8 consider the rules under the federal system?

9 MR. THOMAS: Well, Your Honor, no, not
10 necessarily. I think that by saying that there is no
11 authority doesn't mean that it's not the proper thing to
12 do and that it's not potentially a violation of due
13 process not to do it.

14 THE COURT: Would that be a federal or state
15 issue?

16 MR. THOMAS: Well, I think that -- I guess it
17 could potentially be both but I think certainly it
18 applies to the state side of it in the due process
19 argument that only makes sense that a Defendant is
20 entitled to see -- I mean, we can take it to the point
21 ---

22 THE COURT: Well, cite me one federal case that
23 says that a Defendant in federal court has a right to
24 see the PSI before he's sentenced.

25 MR. THOMAS: Your Honor, I don't have that cite

1 with me.

2 THE COURT: All right.

3 MR. THOMAS: But I will be more than happy to
4 provide it to the Court.

5 THE COURT: Well does one exist is my question?

6 MR. THOMAS: Yes, it's my understanding ---

7 THE APPLICANT: (Affirmative response.)

8 THE COURT: Stop, let him talk.

9 MR. THOMAS: It's my understanding that it does
10 exist, Your Honor. It's also my understanding that the
11 feds actually require that a presentencing report be
12 shown to the Defendant prior to sentencing.

13 THE COURT: Okay.

14 MR. THOMAS: And I will be more than happy to
15 provide that.

16 THE COURT: Well, you know, you're asking me to
17 look at something that I am not by statute and by
18 practice, I don't look at it.

19 MR. THOMAS: Yes, sir.

20 THE COURT: So I should look at something that
21 we don't look at, I should make an exception
22 specifically for Mr. Jones, I guess? Is that what
23 you're asking me to do?

24 MR. THOMAS: No. No ---

25 THE COURT: I tell what you. I'm sorry for

1 interrupting you, continue ---

2 MR. THOMAS: No, no, no. Your Honor, I think
3 that if he has the benefit of -- of -- of bargaining
4 with the Solicitor's Office and that certain information
5 ---

6 THE COURT: Well ---

7 MR. THOMAS: --- is unreliable ---

8 THE COURT: --- if someone from the Solicitor's
9 Office came in and verified that that bargain existed in
10 fact?

11 MR. THOMAS: Well, I think that that's proven
12 through the statement by Ms. Mobley who was counsel and
13 also from her notes that indicate that they did, that
14 this was an agreement, that this agreement was made and
15 that this was going to be a problem if this information
16 comes in. What happens, if he didn't see this
17 information, he had no clue that this information was
18 contained until after the fact. And even after the fact
19 when they had the motion for reconsideration, that's the
20 first point in time that he becomes aware that there are
21 inaccuracies in the presentencing report. Not only does
22 the information from Hunter come in, but also other --
23 four other issues or four other pieces of information
24 come in that are very inflammatory, which are not true.
25 And had this been shown to him prior, this whole problem

1 could have been resolved.

2 Now, you know, if you step back, surely it's
3 ineffective assistance of counsel, both in the -- I
4 mean, it applies to both. It applies both to the plea
5 portion as well as to the sentencing portion that if
6 there are inaccuracies in a report that's going to be
7 submitted to the Court, that it's prejudicial. I mean,
8 even -- even the Judge in his statement on the record
9 says, if these facts are as they are, nothing's going to
10 basically sway my position.

11 Now, the problem is that we've got four issues
12 of fact that are in that presentencing report ---

13 THE COURT: I think the Judge is probably, I
14 could be wrong, referring to the facts alleged in the
15 indictment rather than the report. He pled on the
16 indictment, not the report.

17 MR. THOMAS: Well ---

18 THE COURT: It was the charging instrument,
19 wasn't it?

20 MR. THOMAS: No, sir. No, sir. I think that
21 that is ---

22 THE COURT: Wasn't that the indictment, what he
23 pled guilty to?

24 MR. THOMAS: Yes, sir, he pled -- he pled that
25 but I think that he is talking about -- I mean, it's my

1 interpretation that his statement made in that
2 transcript, that he is talking about the presentencing
3 report because the facts are realleged in that
4 presentencing report including the facts of this
5 jailhouse informant who says, he admitted to me that
6 he's molested, you know, dozens more children, which
7 there's no basis for at all other than a report, an
8 unreliable report from some informant.

9 So I think that it is ineffective assistance.
10 I think that it is an involuntary plea and I think that
11 it is prejudice and I think that's evidenced from the
12 Judge's statement. And I think that due process, in all
13 fairness, would require that we show -- at least show
14 him the presentencing report prior to sentencing.

15 THE COURT: All right. Yes, sir, Mr. Jones
16 (sic).

17 MR. PETRANO: I am not sure what the remedy
18 here is, even assuming the allegations to be true. I
19 guess he would have to go back and be sentenced -- I
20 guess, go to trial for everything since the State
21 breached the plea or at best the prejudice, as he
22 argued, there being a difference in that if he had a
23 different Judge he would have got a lesser sentence if
24 the Judge hadn't seen the presentencing investigation
25 report that he wanted which contained the pod-mate's

1 statement. I'm a little confused there but I think I
2 understand.

3 But let's assume, just for the sake of
4 argument, that there was an agreement between the
5 Solicitor and the Defense, that if he pleas the Judge
6 doesn't get to see the statement from the pod-mate.
7 That in and of itself seems to me, Your Honor,
8 respectfully, to be unenforceable in the sense that a
9 plea agreement, while governed under contract principles
10 is an agreement between the two parties but that has to
11 be approved by the Judge. The Judge can't approve of
12 terms that he's specifically not aware of that are to be
13 kept from him.

14 THE COURT: I guess he could but it would be
15 unwise.

16 MR. PETRANO: It doesn't make any sense. It
17 doesn't make any sense how the judicial branch could
18 enforce that agreement between the executive branch and
19 the private party when they don't know the terms, at
20 least how can they enforce that portion of it.

21 Also, I noticed rule -- the rules of evidence,
22 I think it was 1001 -- 1101(d)(3) specifically says that
23 the rules of evidence don't apply at sentencing in the
24 sense that that is an indication that these sentencings
25 are relaxed, everybody gets to come in and vent.

1 There's nothing to really prevent the State from
2 wheeling in the pod-mate and saying this is what he told
3 me. The Judge would, you know, determine credibility
4 and the oath and the responsibility is to just sentence
5 for what he's actually pleading to which is the
6 indictments and just taking appeal for everybody else in
7 the courtroom, they do that every day. There's
8 oftentimes things that, at least from the reading of the
9 records ---

10 THE COURT: Well, at the guilty plea, a non-
11 jury hearing, you hear things from the State as well as
12 the Defendant that aren't necessarily good evidence but
13 within the trial Judge's discretion to hear it and
14 consider it. And hearing it doesn't necessarily mean he
15 considers it.

16 MR. PETRANO: Right, Your Honor. And my point
17 is, it's not just pleas. If he had gone to trial, there
18 could have been a sentencing and they could have wheeled
19 in the statement then. This is the sentencing phase.
20 All sorts of things can come in. There's no -- no one
21 is cross-examined, there's no Brady, there's nothing
22 like that. Even if he went to trial, the same thing
23 could have happened.

24 I fail to see here the actual prejudice in the
25 sense that I don't see how this could be enforceable,

1 even assuming for the sake of argument that that was a
2 portion of the plea agreement. What doesn't make sense
3 is -- and I'll admit, the Applicant took the stand, he's
4 very articulate, obviously very intelligent, had a great
5 memory, he wasn't just reading nonsense off paper or
6 anything like that. But he's the one who wanted the
7 presentencing report but yet he wanted to -- and I use
8 this with all due respect but manipulate it and keep a
9 portion out. That's disingenuous as far as trying to
10 enforce the bargain and the benefits to him as he saw
11 it.

12 That's all I've got, Judge.

13 THE COURT: Okay. Thank you, Mr. Petrano.

14 Yes, Mr. Thomas.

15 MR. THOMAS: Your Honor, if I may. Just as Mr.
16 Petrano was speaking, this popped into my mind. I got
17 hammered in the Supreme Court on time with a fellow who
18 got ---

19 THE COURT: Well, it's better in the Supreme
20 Court than at a bar.

21 MR. THOMAS: Sir?

22 THE COURT: Never mind, go ahead.

23 MR. THOMAS: Oh. And my client got sentenced
24 to an illegal sentence, they put him on house arrest and
25 he wandered back in a couple of months later, and they

1 said, ooh, this is an error. He stood before the bar
2 and they gave him 10 years.

3 THE COURT: Things happen.

4 MR. THOMAS: And the Supreme Court said, well,
5 you know, nobody appealed it so -- so we can't do
6 anything with it. But it made me think that in this
7 case, you know, all right. So if we say there's
8 something wrong with the deal saying that, you know, you
9 shouldn't present this to the Judge, the Judge doesn't
10 know about it, the Judge can't rule on it, you know,
11 maybe the error -- maybe the remedy was never to have
12 made the deal. If it's a bad deal and there's something
13 wrong with the deal to begin with, I think it still goes
14 to the plea because even if it shouldn't have been done,
15 it tainted the whole thing. I mean, it's like an
16 illegal sentence. I entered into this thing based upon
17 something I couldn't do which is an illegal sentence but
18 it affected my decision to make that decision.

19 And second, even if we take that out of the --
20 out of the cooker, I think it's still ineffective even
21 though we don't have a South Carolina cases that say
22 this. I still think it's ineffective not showing the
23 presentencing report.

24 THE COURT: All right.

25 MR. THOMAS: Because of errors. I mean, if

1 there are errors in that report which could have at
2 least ---

3 THE COURT: You're asking me to base my
4 decision on what you think?

5 MR. THOMAS: No, sir. No, sir, I'm just
6 arguing ---

7 THE COURT: You said you don't have in
8 authority but you think it's ineffective; therefore, I
9 should base my decision on your thoughts.

10 MR. THOMAS: Well, no. I think that what's
11 happened is that this issue, because we don't use
12 presentencing reports very -- very often in our ---

13 THE COURT: I use them all the time. I've got
14 eight of them in my office right -- eight or nine, eight
15 in my office right now.

16 MR. THOMAS: Just because the Supreme Court
17 hasn't rendered a decision on them doesn't mean that
18 it's not ineffective assistance of counsel.

19 THE COURT: I never said -- I understand.

20 MR. THOMAS: That's just my argument. That's
21 just my belief based ---

22 THE COURT: Mr. Thomas, I've practiced law a
23 long time too, I understand your position and ---

24 MR. THOMAS: Yes, sir.

25 THE COURT: --- you're doing your job good, I'm

1 not going to stop you.

2 MR. THOMAS: All right. But that's what I see.
3 I see -- I think the remedy was not to have entered into
4 the deal to begin with ---

5 THE COURT: Well, see, this is the problem.
6 The deal was already made, the die was cast, he had
7 already pled guilty. So he's going to complain about
8 something that he asked for after the fact that would
9 have had to prevent him from pleading guilty.

10 MR. THOMAS: But the thing is that the
11 testimony ---

12 THE COURT: I'm ---

13 MR. THOMAS: Right, right, right and I
14 certainly understand that. And I think that the problem
15 is that his testimony is that I would not have entered
16 into this plea except for. And although the except for
17 ---

18 THE COURT: I would not have entered the plea
19 based on the contingency that's yet to occur, something
20 in the future. I ---

21 MR. THOMAS: But ---

22 THE COURT: He's saying that I would not have
23 pled guilty except for a contingency that occurred in
24 the future.

25 MR. THOMAS: But if it hadn't have been

1 bifurcated, it would have all been in the same hearing.

2 THE COURT: Well, you just argued earlier that
3 it wasn't bifurcated because ---

4 MR. THOMAS: But it is a continuation so I
5 think that what we have to do is look at it as a
6 continuation of the whole ---

7 THE COURT: Okay.

8 MR. THOMAS: --- rather than a bifurcation.

9 THE COURT: All right. Mr. Thomas, you know
10 I'm not laughing at you or the situation but these
11 things are prickly.

12 MR. THOMAS: They are.

13 THE COURT: All right.

14 MR. THOMAS: They are.

15 THE COURT: Thank you, sir.

16 MR. THOMAS: Thank you, sir.

17 THE COURT: Anything further from the State?

18 MR. PETRANO: Nothing further.

19 THE COURT: Thank you all so very much. I'll
20 let you know my decision in due course.

21 MR. THOMAS: Thank you, Your Honor.

22 ----- END OF TRANSCRIPT OF RECORD -----

23

24

25

1 CERTIFICATE OF REPORTER

2

3 STATE OF SOUTH CAROLINA)

4 COUNTY OF RICHLAND)

5

6 I, Crystal Holmes, Official Court Reporter for
7 the Fifth Judicial Circuit of the State of South
8 Carolina, do hereby certify that the foregoing is a
9 true, accurate and Complete Transcript of Record of
10 the proceedings had and evidence introduced in the
11 hearing of the captioned case, relative to appeal, in
12 the Court of Common Pleas for Richland County, South
13 Carolina, on the 28th day of February, 2011.

14 I do further certify that I am neither of kin,
15 counsel nor interest to any party hereto.

16

17

November 23, 2012

18

19

20

Crystal Holmes, Court Reporter

21

22

23

24

25

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Brandon Jones, 00311373,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2009CP4006280

ORDER OF DISMISSAL

JEANETTE W. McBRIDE
 C. P. & G. S.

2012 FEB 24 AM 8:38

RICHLAND COUNTY
 FILED

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 31, 2009. The Respondent made its Return on April 1, 2010. An evidentiary hearing into the matter was convened on February 28, 2011 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Tommy Thomas, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf, as did his father. The Applicant's plea counsel, Lauren Mobley, Esquire also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections. The Applicant is presently incarcerated

following a June 27, 2005 plea before the Honorable John L. Breeden, Jr. The Applicant was sentenced on September 15, 2005 to the following:

Charge	Indictment Number	CDR-Stat Code	Potential Sentence	Charged Offense	Offense Description	Sentence Received	Sentenced by
12-04	2004GS4008462	385A 16-03-0655(C)(1)	* 30 * Sex / CSC w/ minor or Attempt - victim under 11 yrs of age - First degree			30	No
12-04	2004GS4008463	385A 16-03-0655(C)(1)	* 30 * Sex / CSC w/ minor or Attempt - victim under 11 yrs of age - First degree			30	No
12-04	2004GS4008464	385A 16-03-0655(C)(1)	* 30 * Sex / CSC w/ minor or Attempt - victim under 11 yrs of age - First degree			30	No
NOTES						TOTAL	POSSIBLE
						30	

The Applicant appealed his plea. Following an Anders brief, the South Carolina Court of Appeals denied the appeal.¹ State v. Jones, Op. No. 2008-UP-175 (S.C. Ct. App. filed March 13, 2008). The Remittitur was dated September 9, 2008.

In the PCR application, the Applicant made the following allegations:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel

(b) Involuntary Guilty Plea

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) Please see attached

(b) Please see attached

(c) _____

18. State clearly the relief you seek in filing this application.

That the conviction and sentence be vacated, or that the sentence be vacated and the case remanded for resentencing.

¹ Anders v. California, 386 U.S. 738 (1967).

ATTACHMENT TO PCR APPLICATION

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) - Ineffective Assistance of Counsel

1. Plea counsel failed to actively pursue a negotiated sentence as part of a plea bargain, ultimately resulting in applicant's exposure to and the judge's subsequent imposition of the maximum sentence on all original charges.

2. Plea counsel failed to actively investigate the facts surrounding a defense which could have demonstrated applicant's legal innocence of the charges against him, and at least would have proven mitigating circumstances which would almost certainly have resulted in a reduced sentence.

3. Sentencing Counsel failed to inform applicant of contents of his PSI despite his repeated requests, making it impossible for him to object to its contents at sentencing on the basis of provable inaccuracies. Had applicant been so informed and had such objection been made, applicant submits that the judge's sentence would not have been as severe.

4. After sentencing and prior to a then-imminent reconsideration, sentencing counsel convinced applicant not to withdraw his plea - an action which could have been permissible given the state's breach of two promises made to obtain applicant's guilty plea.

5. Sentencing counsel convinced applicant to allow the withdrawal of a motion to reconsider the sentence, in spite of the fact that the maximum sentence had already been imposed on each, the judge had already stated that he did not intend to run the sentences consecutive, and applicant wished to challenge the inaccuracies in the PSI, which had at that point been discovered.

(b) - Involuntary Guilty Plea

1. Applicant did not originally intend to plead guilty. Based on information and belief, the prosecution indicated to plea counsel that, in the event of a guilty plea, certain information would not be made available to the judge at sentencing, and that the prosecution would not make any particular request as to the sentence. Upon the conditions, defendant pleaded guilty. Later, however, the information that supposedly was not to be revealed was discovered in the PSI, and the prosecution requested the "maximum, consecutive sentence" at the sentencing hearing.

At the evidentiary hearing, Applicant proceeded, in part, on the allegations stated in the application for post-conviction relief.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

The Applicant that he pled guilty because he thought there would be a pre-sentencing investigation. The Applicant explained that he did go to Ecuador, but that he was not fleeing. The Applicant explained that he thought the pre-sentencing investigation would be similar to the federal version, in that facts would be investigated. The Applicant explained that his pod-mate at the detention center ended up writing the Richland County Sheriff with lies and inflammatory comments beyond belief. After the pod-mate letter, the Applicant concluded that it would be best to go to trial. The Applicant explained that the pod-mate letter suggested that the Applicant confessed to the writer and told of twenty (20) to thirty (30) other victims from the Charlotte area. The Applicant explained that he was not a serial predator but was simply a confused kid who made mistakes. The Applicant explained that there were no plea offers so to speak. The Applicant explained that he thought the deal was that if he pled guilty then the pod-mate letter would not be shown to the judge. The Applicant explained that when the plea court asked if there

were any promises in exchange for the plea that it would have been awkward to correctly answer the judge because to say yes would reveal that the agreement was to keep the pod-mate letter from him. The Applicant explained that ultimately, the Chief's letter (paragraph 3) revealed the damaging (and false) information from the pod-mate letter. The Applicant explained that he did attempt to return from Ecuador but that his funds were frozen. The Applicant testified that the case comes down to the fact that the State breached the plea agreement because the deal was to keep the pod-mate material from the judge and that did not happen. The Applicant explained that he wanted to withdraw the plea once he found out about the presentencing report details.

The Applicant's father testified that he was not able to get a copy of the presentencing report, but that the deal was to keep that pod-made statement out.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

Beyond his review of the undisputed procedural history, this Court finds Applicant's testimony is not credible. Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance.

The plea court explained that the harsh sentence was based on the nature of the crime itself coupled with the Applicant's attempt to flee to Ecuador. (ROA, p. 19 – 20). Plea counsel objected to the sentencing report, the plea court did not agree. (ROA, p. 4 – 6). The issue of the pre-sentencing report was the issue on appeal, it appears to be preserved, the appellate court affirmed the conviction and sentence. See, Anders brief. This allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). There is no credible evidence to support the notion that the "deal" was to hide something from the plea court. Such a "deal" is not conducive to the nature of a guilty plea proceeding. "A majority of courts addressing the issue at bar have concluded that neither a defendant nor the government is bound by a plea offer until it is approved by the court." Reed v. Becka, 333 S.C. 676, 686, 511 S.E.2d 396,

402 (Ct. App. 1999). A plea court cannot approve what it does not know. The Applicant's complaint at the time of the plea was simply that the pre-sentencing report was not balanced, in that it did not include interviews with his family, etc. (ROA, p. 4 – 6; Brief of Appellant, p. 1 – 9). The Applicant cannot claim on appeal that the pre-sentencing report was incomplete, and then later claim during PCR that it had too much information.² The plea court was told "there are no negotiations or recommendations." (Supplemental ROA, p. 3). Accordingly, the Applicant has failed to satisfy his burden of proof and demonstrate the counsel's performance was deficient.

² It was the defense who requested the pre-sentence report. (Supplemental ROA, p. 3 L. 15 – 17; p. 20 L. 20).

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional

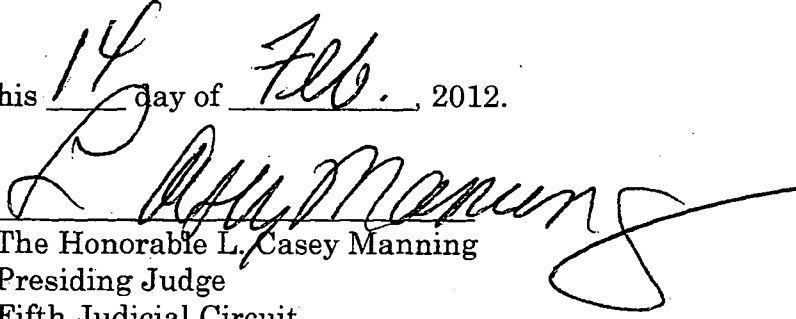
relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.


This Court cautions the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 14 day of Feb., 2012.


 The Honorable L. Casey Manning
 Presiding Judge
 Fifth Judicial Circuit

 South Carolina.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

BRANDON JONES #311373,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)
 _____)

Docket No.:2009-CP-40-6280

**NOTICE OF MOTION AND
 MOTION TO ALTER OR
 AMEND THE JUDGMENT**

PLEASE TAKE NOTICE that the Applicant, through his undersigned attorneys will move before the Honorable Casey L. Manning to alter or amend the judgment entered in this action on February 14, 2012. A copy of the Order of Dismissal was received by the undersigned attorneys on March 5, 2012.

COMES NOW the Applicant, by and through his undersigned attorney, and submits the following:

1. That the Attorney for the Applicant mailed a copy of this Court's Order to Applicant at Lee Correctional Institution.
2. Counsel has, however, received communication from his client with concern about certain issues not fully addressed in the Courts Order.
3. That a transcript of the Post-Conviction Relief hearing would be beneficial in this matter.
4. Counsel would like to preserve Applicant's right to alter or amend the Order of Dismissal.

For the above reasons, the Applicant would respectfully request that this Court allow counsel to order the transcript of the Post Conviction Relief action which was held on February 28, 2011 to determine if all issues raised at trial are adequately addressed in the Order of Dismissal and to alter or amend the Court's Order as necessary.

Respectfully submitted,

Tommy A. Thomas
Attorney for the Applicant
7588 Woodrow Street
Irmo, SC 29063
(803) 732-5507

March 9, 2012
Irmo, South Carolina

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Brandon Jones, #311373,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

2009-CP-40-06280

**RETURN TO RULE 59(e), SCRPC,
 MOTION TO ALTER OR AMEND**

RICHLAND COUNTY
 FILED
 MAR 24 PM 12:50
 CLERK J.P. COCHRAN
 C.R.P. & G.S.

This matter comes before the Court by way of Applicant's Rule 59(e), SCRPC, Motion to Alter or Amend Judgment dated March 9, 2012.

As a brief background, the current application for post-conviction relief (PCR) was filed August 31, 2009. An evidentiary hearing into the matter was convened before this Court on February 28, 2011, at the Richland County Courthouse. Applicant was present at the hearing with counsel, Tommy Thomas, Esquire. The state was represented by Brian T. Petrano of the South Carolina Attorney General's Office. At the hearing, both Applicant and Applicant's former plea counsel, Lauren Mobley, Esquire, testified. By order filed February 24, 2012, this Court denied Applicant's request for relief with prejudice. The current post-hearing motion followed.

Respondent respectfully requests this Court deny the current motion to alter or amend as the February 24, 2012, order of dismissal entered contains all of the required findings of facts and conclusions of law required by S.C. Code § 17-27-80 and Rule 52(a), SCRPC. See also Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007). Respondent submits the current order of dismissal makes accurate, complete and appropriate findings based upon the testimony and arguments presented at the PCR hearing. Therefore, Applicant's Rule 59(e), SCRPC, motion to alter or amend should be denied. Further, Respondent submits convening a hearing on the motion will be of no help

to this Court's consideration of the motion and therefore, the motion should be denied without hearing.

WHEREFORE, having made its Return to the motion, the State requests the current motion be denied and said motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ROBERT D. CORNEY
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

Columbia, South Carolina
January 22, 2013

January 25, 2013

The Honorable Casey L. Manning
Judge of Fifth Judicial Circuit
P.O. Box 192
Columbia, SC 29202

RE: Brandon Jones #311373 v. State of South Carolina
Docket No.: 2009-CP-40-6280

Dear Judge Manning:

I am in receipt of the State's Return to my Motion for Reconsideration as well as the Proposed Order of Dismissal. I just recently received the transcript from the Post-Conviction Relief hearing and had an opportunity to review this in light of the Court's original Order. There are just a couple of issues that I am concerned are not set out in sufficient detail in the Order.

1. Testimony was presented that the Applicant had an agreement with the Solicitor's Office through his attorney that for in return of the Plea, the information that had been provided by the jailhouse informant was not going to be presented to the Court. The Applicant contested the validity of the statements made. Plea counsel testified that there was a note in the file that suggests there was an agreement between the State and the defense and, that this matter was not going to be presented to the Judge as part of the plea deal. (PCR Transcript pg. 47, lines 11-22)

2. There is no discussion of potential ineffective assistance of counsel by not advising the Defendant of the contents of the Pre-Sentencing Report prior to sentencing.

3. Whether counsel was ineffective in her recommendations to the Applicant to withdrawal his Motion for Reconsideration.

4. The Order addresses the issue of his Appeal. The issue set out in paragraph one (1) was not included as it was not preserved.

I have enclosed a copy of the transcript for your consideration. My client wishes to Appeal this decision and I wanted to make sure that all of his issues were preserved for Appeal.

Should you have any questions or if I can provide any additional information, please do not hesitate to contact me.

Yours truly,

Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Robert Corney, Esq.
Brandon Jones #311373

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2009CP4006280

Brandon #311373 Jones

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for: Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): Affirmed; Reversed; Remanded; Other _____

RICHLAND COUNTY
FILED
2013 MAR 11 AM 10:44
JANETTE W. BRIDE
CLERK

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 11 March 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Brandon #311373 Jones

Tommy A Thomas

Robert Daniel Corney

Brandon #311373 Jones

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W. Bride

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Brandon Jones, #311373,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

2009-CP-40-06280

ORDER DENYING RULE 59(e), SCRPC
 MOTION TO ALTER OR AMEND

RICHLAND COUNTY
 FILED
 MAR 11 AM 10:38
 KENNETH W. McBRIDE
 C. C. P. & G. S.

This matter comes before this Court by way of Applicant's Rule 59(e), SCRPC, Motion to Alter or Amend a Judgment filed with the Richland County Clerk of Court on December 3, 2012.

Applicant filed his application for post-conviction relief (PCR) on August 31, 2009. An evidentiary hearing into the matter was convened before this Court on February 28, 2011, at the Richland County Courthouse. Applicant was present at the hearing with counsel, Tommy Thomas, Esquire. The state was represented by Brian T. Petrano of the South Carolina Attorney General's Office. At the hearing, both Applicant and Applicant's former plea counsel, Lauren Mobley, Esquire, testified. By order filed February 24, 2012, this Court denied Applicant's request for relief with prejudice. The current post-hearing motion followed.

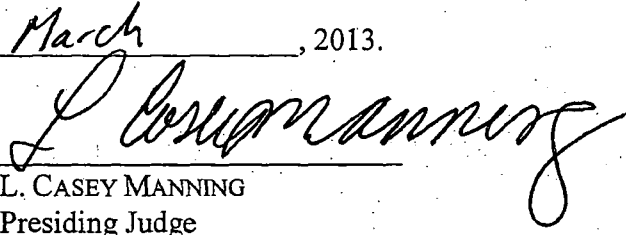
Based upon careful reconsideration of all of the evidence in this case and upon full consideration of Applicant's motion and supporting documents, this Court is not persuaded to alter or amend the judgment. This Court further finds the February 24, 2012, order of dismissal entered contains all of the required findings of facts and conclusions of law required by S.C. Code § 17-27-80 and Rule 52(a), SCRPC. See also Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007). After a full review of the case, this Court finds the current order of dismissal makes accurate, complete and appropriate findings based upon the testimony and arguments presented at the PCR hearing.

Therefore, Applicant's Rule 59(e), SCRCP, motion to alter or amend is denied. Further, this Court finds oral argument will not aid in reconsideration of the original judgment.

IT IS THEREFORE ORDERED:

1. Applicant's Rule 59(e), SCRCP, motion to alter or amend judgment is denied and dismissed.

AND IT IS SO ORDERED this 7 day of March, 2013.


L. CASEY MANNING
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and am guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

DOCKET NO. 2004-08-40-8492

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2004

103

THE STATE
vs.

BRANDON JONES

Indictment for

CRIMINAL SEXUAL CONDUCT
WITH A MINOR 1st

SC Code: 16-3-685(1)
CDR Code: 0388
Class FEL(A/V)

WITNESSES

(S) Brian Buck, Immo PD

ARREST WARRANT NUMBER

1-206483

ACTION OF GRAND JURY

TRUE BILL

Forfeiture of Grand Jury DEC 15 2004

Date:

VERDICT

Forfeiture of Petit Jury

Date:

CEIFIED TRUE COPY
ORIGINAL FILED
C.C.P. & G.S.
RICHLAND COUNTY

Handwritten signature

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on December 15, 2004 the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That Brandon Jones (DOB: 6/3/83), did in Richland County on or between September – December 2003 engage in a sexual battery upon Min (DOB:) who at the time was less than eleven (11) years of age, and defendant being older than said minor. To wit: performed fellatio on said victim All in violation of SC Code of Laws § 16-3-655(1) (1976 as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Glass
Warren B. Glass, SOLICITOR

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Jeanette W. McEwen
C.C.C.P. & G.S.
RICHLAND COUNTY

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.

INDICTMENT/CASE#:
04 -GS- 40 8462

AKA: Brandon Jones
Race: W Sex: M Age: 22
DOB: SS#
Address: 306
City, State: Irmo SC 29063
DL# SID#

A/W#: 1-205453
Date of Offense: Sept - Dec 2003
S.C. Code §: 16-3-653(D)
CDR Code #: 0131815
 CASE RESTORED
SENTENCE
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Criminal Sexual Conduct w/ Minor 1st
in violation of § 16-3-653(D) of the S.C. Code of Laws, bearing CDR Code # 0131815
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State
ATTEST: [Signature] Brandon Jones [Signature]
Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on: same date
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

SPECIAL CONDITIONS:
 RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms:
 set by SCDPPPS
Recipient:
*Fine:
\$14-1-206 (Assessments 107.5%)
\$14-1-211(A)(1) (Conv. Surcharge) \$100
\$14-1-211(A)(2) (DL Surcharge) \$100
\$56-5-2995 (DUI Assessment) \$12
§ 35.13 (Public Def/Prob) \$500
§73.3, 1B TP (Law Enforce. Funding) \$25
§33.7, 1B TP (Drug Court Surcharge) \$100
§50-21-114(BU) Breath Test Fee) \$50
§56-5-2942(J) (Vehicle Assessment) \$40/ea
3% in County (if paid in installments)
TOTAL

PTUP _____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab or Job Corp.
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.
PRESIDING JUDGE [Signature]
Judge Code: 10161
Sentence Date: 12/2005

Clerk of Court/ Deputy Clerk
Court Reporter: [Signature]

TRUE COPY
OF ORIGINAL FILED
Janelle Williams
S.C.A. 217 (7/2003)
RICHLAND COUNTY

White - Clerk Green - Corrections Canary - Probation Pink - Defendant



ARREST WARRANT

1-205453

STATE OF SOUTH CAROLINA

County Irmo Municipality of

THE STATE against

Brandon Eugene Jones
Address: 8030 SC 29063
Phone: 803-
Sex: M Race: W Height: 510 Weight: 160
DL State: SC - DL #:
DOB: Agency OR#: SC03220700

Prosecuting Agency: Irmo Police Department
Prosecuting Officer: Sgt. Scott Franklin
Offense: Sex/Crim sex conduct w/min <11 yrs-1st deg
Code/Offense Sec: 16-03-085(1) Offense Code: 0385

This warrant is CERTIFIED FOR SERVICE in the
County Irmo Municipality of
is to be arrested and brought before me to be dealt with
according to law

Date _____ (L.S.)
Signature of Judge _____

RETURN
A copy of this arrest warrant was delivered to
defendant Brandon Eugene Jones
on 01/12/2003
Signature of Constable/Law Enforcement Officer _____

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

County Irmo Municipality of

AFFIDAVIT

Personally appeared before me the affiant, Sgt. Scott Franklin,
being duly sworn deposes and says that defendant, Brandon Eugene Jones,
did within this county and state on 12/13/2003

State of South Carolina for ordinance of _____ County/ Irmo
in the following particulars:

DESCRIPTION OF OFFENSE

Sex/Crim sex conduct w/min <11 yrs-1st deg
I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

During the months from September, 2003 to December, 2003 at
Road, Irmo, Richland County, South
Carolina the defendant engaged in oral sex with the victims. The defendant performed oral sex on the victims and had the
victims perform oral sex on him. The defendant also masturbated in front of the victims and performed masturbation
the victims. The defendant also showed the victims pornographic videos while engaged in these acts. The victims are
three ten (10) year old males. This behavior occurred numerous times during the indicated time frame.

violates the criminal law of the State of South Carolina

Sworn to and subscribed before me
on 01/12/2003

Signature of Affiant _____
Affiant's Address: 1238 Columbia Avenue
Affiant's Telephone: 803-781-8088

STATE OF SOUTH CAROLINA
County Irmo Municipality of

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasons to believe that on
12/13/2003 defendant Brandon Eugene Jones
did violate the criminal laws of the State of South Carolina (or ordinances of _____) as set forth below:

DESCRIPTION OF OFFENSE
Sex/Crim sex conduct w/min <11 yrs-1st deg

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be
dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or
as thereafter practicable.

Signature of Issuing Judge _____ (L.S.)
Judge Code: 041
Judge's Address: P.O. Box 405
Judge's Telephone: 803-781-7050

Issuing Court _____
Magistrate's _____
Municipal Circuit

Original

After being fully advised as to my legal rights, I hereby waive presentation to the Grand Jury.

CERTIFIED TRUE COPY OF ORIGINAL FILED.

RICHLAND COUNTY

DOCKET NO. 2004-08-46-8483

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2004

103

THE STATE
vs.

BRANDON JONES

Indictment for
CRIMINAL SEXUAL CONDUCT
WITH A MINOR 1ST

SC Code: 16-3-606(1)
CDR Code: 9385
Class FEL(A)(V)

WITNESSES

(8) Brian Buck, Immo PD

ARREST WARRANT NUMBER

1-206464

ACTION OF GRAND JURY

TRUE BILL

For person of Grand Jury
Date: DEC 15 2004

VERDICT

For person of Petit Jury
Date:

Defendant

hereby appear in my own proper person and be guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on December 15, 2004 the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That Brandon Jones (DOB: 6/3/83), did in Richland County on or between September – December 2003 engage in a sexual battery upon Minor 2 (DOB:

) who at the time was less than eleven (11) years of age, and defendant being older than said minor. To wit: performed fellatio on said victim. All in violation of SC Code of Laws § 16-3-655(1) (1976 as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Giese
Warren B. Giese, SOLICITOR

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Jeanette W. McBride
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
 STATE VS
Brandon Jones
 AKA:
 Race: 1.1 Sex: M Age: 22
 DOB: 6
 Address:
 City, State, Zip: 16mo SC 29063
 DL# _____ SID# _____

INDICTMENT/CASE#: 04 -GS- 40 - 8463
 A/W#: 1-205454
 Date of Offense: Sept-Dec 2003
 S.C. Code §: 16-3-655(1)
 CDR Code #: 0131815
 CASE RESTORED
 SENTENCE
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: CSC Withing 1st Degree
 in violation of §16-3-655(1) of the S.C. Code of Laws, bearing CDR Code # 0131815
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State
 ATTEST: [Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*, the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on Same Date
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
 Department of Corrections.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms:
 set by SCDPPPS _____

PTUP _____ days/hours Public Service Employment
 Obtain GED _____
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol Testing _____
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Recipient: _____
 *Fine:

\$14-1-208 (Assessments 107 5%)	
\$14-1-211(A)(1) (Conv. Surcharge)	\$100
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
§ 35.13 (Public Def/Prob)	\$500
\$73.3, 1B TP (Law Enforce. Funding)	\$25
\$33.7, 1B TP (Drug Court Surcharge)	\$100
\$50-21-114(BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	
TOTAL	

Appointed PD or appointed other counsel, §35.13 TP
 Requires \$500 be paid to Clerk during probation.

[Signature]
 Clerk of Court/ Deputy Clerk
 Court Reporter: [Signature]

PRESIDING JUDGE [Signature]
 Judge Code: 110161
 Sentence Date: _____

CERTIFIED TRUE COPY
 OF ORIGINAL FILED
[Signature]
 C.C. & C.S.
 RICHLAND COUNTY
 SOUTH CAROLINA
 SCSA 21-7(2003)

White - Clerk Green - Corrections Cyan - Probation Pink - Defendant

RICHLAND COUNTY SOUTH CAROLINA

CERTIFIED TRUE COPY OF ORIGINAL FILED

Form approved by
Clerk of Court
July 11, 1998
SCC-98-0000

STATE OF SOUTH CAROLINA

County Municipality of Irmo

AFFIDAVIT

Personally appeared before me the affiant, Sgt. Scott Franklin, being duly sworn deposes and says that defendant, Brandon Eugene Jones, did within this county and state on 12/13/2003

State of South Carolina (or ordinance of County/ Municipality of Irmo) in the following particulars:

DESCRIPTION OF OFFENSE:

Sex/Crim sex conduct within <11 yrs-1st deg

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

During the months from September, 2003 to December, 2003 at Road, Irmo, Richland County, South Carolina the defendant engaged in oral sex with the victims. The defendant performed oral sex on the victims and the victims perform oral sex on him. The defendant also masturbated in front of the victims and performed masturbation on the victims. The defendant also showed the victims pornographic videos while engaged in these acts. The victims are three ten (10) year old males. This behavior occurred numerous times during the indicated time frame.

Sworn to and subscribed before me on 12/13/2003

Signature of Affiant

Affiant's Address: 1230 Columbia Avenue

Affiant's Telephone: 803-781-9088

STATE OF SOUTH CAROLINA

County Municipality of Irmo

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY, it appearing from the above affidavit that there are reasonable grounds to believe that on 12/13/2003 defendant Brandon Eugene Jones did violate the criminal laws of the State of South Carolina (or ordinance of Irmo) as set forth below

DESCRIPTION OF OFFENSE

Sex/Crim sex conduct within <11 yrs-1st deg

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as I may direct in writing.

Signature of Issuing Judge

Judge's Address: EO Box 405

Judge's Telephone: 803-781-7050

Issuing Court Magistrate Municipal Circuit

Signature of Constable/Law Enforcement Officer

Original

ARREST WARRANT

1-205454

STATE OF SOUTH CAROLINA

County Municipality of Irmo

THE STATE against

Brandon Eugene Jones

Address: 1

Phone: 803 SSN: 3

Sex: M Race: W Height: 510 Weight: 160

DL State: SC DL #: 3

DOB: 1 Agency ORI#: SC0320210

Prosecuting Agency: Irmo Police Department

Prosecuting Officer: Sgt. Scott Franklin

Offense: Sex/Crim sex conduct within <11 yrs-1st deg

Offense Code: 0385

Code/Ordinance Sec: 1A-03-085(1)

This warrant is CERTIFIED FOR SERVICE in the

County Municipality of Irmo

is to be arrested and brought before me to be dealt with according to law.

Signature of Judge

Date: _____ (L.S.)

RETURN

A copy of this arrest warrant was delivered to defendant Brandon Eugene Jones on 12/13/2003

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

SOUTH CAROLINA
RICHLAND COUNTY

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
I, Brandon Jones
hereby appear in my own proper person and am guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

POCKET NO. 2004-09-40-0464

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2004

103

THE STATE
vs.

BRANDON JONES

Indictment for
CRIMINAL SEXUAL CONDUCT
WITH A MINOR 1st

SC Code: 16-3-455(1)
CDR Code: 0366
Class FEL/AV

WITNESSES

(S) Brian Buch, Immo PL

ARREST WARRANT NUMBER

I-306458

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: DEC 15 2004

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on December 15, 2004 the Grand Jurors of Richland County present upon their oath:

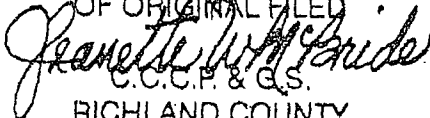
CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That Brandon Jones (DOB: 6/3/83), did in Richland County on or between September - December 2003 engage in a sexual battery upon Minor (DOB:) who at the time was less than eleven (11) years of age, and defendant being older than said minor. To wit: performed fellatio on said victim. All in violation of SC Code of Laws § 16-3-655(1) (1976 as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 Warren B. Giese, SOLICITOR

CERTIFIED TRUE COPY
 OF ORIGINAL FILED


 J. C. C. P. & G. S.
 RICHLAND COUNTY
 SOUTH CAROLINA

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE vs. Brandon Jones

INDICTMENT/CASE#: 04 GS 40 8464
A/W#: 1-205455
Date of Offense: Sept - Dec 2003
S.C. Code §: 16-3-655(1)
CDR Code #: 0131815
 CASE RESTORED
 SENTENCE
 PLEA TRIAL

AKA: _____
Race: _____
DOB: SS
Address: 3
City, State, Zip: Line SC 2906
DL#: SID#

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Convicted Sexual Conduct with Minor 15th Dy
in violation of § 16-3-655(1) of the S.C. Code of Laws, bearing CDR Code # 0131815
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State
ATTEST: [Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on: Same Date
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment terms: _____
 set by SCDPPPS

PTUP _____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corp. _____
May serve W/E beginning: _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine to be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Recipient: _____
*Fine:
\$14-1-206 (Assessments 107.5%) \$ _____
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
\$56-5-2995 (DUI Assessment) \$12 \$ _____
\$35.13 (Public Def/Prob) \$500 \$ _____
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
\$50-21-114(BUI Breath Test Fee) \$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ _____
TOTAL \$ _____

Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

[Signature] Clerk of Court/ Deputy Clerk
Court Reporter: [Signature]

PRESIDING JUDGE [Signature]
Judge Code: 1061
Sentence Date: 12/16/03

COPIES OF ORIGINAL FILED
[Signature]
RICHLAND COUNTY (2003)
SOUTH CAROLINA

White - Clerk Green - Corrections Canary - Probation Pink - Defendant

From the original
July 21, 2003
SCALAPB

ARREST WARRANT

1-205455

STATE OF SOUTH CAROLINA
County: Municipalty of



THE STATE
against

Brandon Eugene Jones
Address: 1218 Columbia Avenue
Phone: 803-781-8088 SSN: [redacted]
Sex: M Race: ML Height: 510 Weight: 160
DL State: SC DL #: [redacted]
DOB: [redacted] Agency ORID: SC0320700
Prosecuting Agency: Jmo Police Department
Prosecuting Officer: Sgt. Scott Erickson
Offense: StatCrim sex conduct w/min 51 yrs-1st deg
Offense Code: 0385
Code/Ordinance Sec: 16-03-0855(1)

This warrant is CERTIFIED FOR SERVICE in the
County: Municipalty of
Jmo
The accused
is to be arrested and brought before me to be dealt with
according to law
Date: _____ (U.S.)
Signature of Judge

RETURN
A copy of this arrest warrant was delivered to
defendant Brandon Eugene Jones
on 7/21/2003
Signature of Constable/Law Enforcement Officer
RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

County: Municipalty of
Jmo

Personally appeared before me the affiant Sgt. Scott Erickson
being duly sworn deposes and says that defendant Brandon Eugene Jones
did within this county on 12/13/2003

State of South Carolina for ordinance of County: Municipalty of Jmo

DESCRIPTION OF OFFENSE

StatCrim sex conduct w/min <11 yrs-1st deg
I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following fact:

During the months from September, 2003 to December, 2003 at
Carolina the defendant engaged in oral sex with the victims. The defendant performed oral sex on the victims and had
victims perform oral sex on him. The defendant also masturbated in front of the victims and performed masturbation
the victims. The defendant also showed the victims pornographic videos while engaged in these acts. The victims are
thirteen (13) year old males. This behavior occurred numerous times during the indicated time frame.

Sworn to and subscribed before me
on 12/13/2003 (U.S.)
Signature of Issuing Judge

STATE OF SOUTH CAROLINA
County: Municipalty of
Jmo

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY ON ANY CONSTABLE OF THIS COUNTY
It appearing from the above affidavit that there are reasonable grounds to believe that on
12/13/2003 defendant Brandon Eugene Jones

did violate the criminal laws of the State of South Carolina (or ordinance of
County: Municipalty of Jmo) as set forth below
DESCRIPTION OF OFFENSE:
StatCrim sex conduct w/min <11 yrs-1st deg
Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be
dealt with according to law. A copy of this arrest warrant shall be delivered to the defendant at the time of its execution, or
to the nearest practicable

Signature of Issuing Judge
(U.S.)
Judge's Address: PO Box 406
Judge's Telephone: 803-781-7050

FROM THE ORIGINAL
JULY 21, 2003
SCALAPB

STATE OF SOUTH CAROLINA
County: Municipalty of
Jmo

AFFIDAVIT

Personally appeared before me the affiant Sgt. Scott Erickson
being duly sworn deposes and says that defendant Brandon Eugene Jones
did within this county on 12/13/2003

State of South Carolina for ordinance of County: Municipalty of Jmo

StatCrim sex conduct w/min <11 yrs-1st deg
I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following fact:

During the months from September, 2003 to December, 2003 at
Carolina the defendant engaged in oral sex with the victims. The defendant performed oral sex on the victims and had
victims perform oral sex on him. The defendant also masturbated in front of the victims and performed masturbation
the victims. The defendant also showed the victims pornographic videos while engaged in these acts. The victims are
thirteen (13) year old males. This behavior occurred numerous times during the indicated time frame.

Sworn to and subscribed before me
on 12/13/2003 (U.S.)
Signature of Affiant

Affiant's Address: 1218 Columbia Avenue
Affiant's Telephone: 803-781-8088

STATE OF SOUTH CAROLINA
County: Municipalty of
Jmo

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